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# Emergency Rules

## DECLARATION OF EMERGENCY

### Department of Agriculture and Forestry Office of Agriculture and Environmental Sciences

Horticulture and Quarantine Programs (LAC 7:XV.127)

In accordance with the emergency provisions of the Administrative Procedures Act, R.S. 49:953(B), and the authority of the state entomologist under the provisions of R.S. 3:1652, notice is hereby given that Department of Agriculture and Forestry is adopting these emergency regulations establishing a quarantine for the following citrus pests: citrus greening disease (CG), also known as Huanglongbing disease of citrus, caused by the bacterial pathogen *Candidatus Liberibacter* spp.; Asian citrus psyllid (ACP), *Diaphorina citri* Kuwayama; and citrus canker disease (CC) caused by the bacterial pathogens *Xanthomonas axonopodis* pv. *citri* and *Xanthomonas axonopodis* pv. *aurantifolii*. The state entomologist has determined that CG, ACP and CC have been found in this state and may be prevented, controlled, or eradicated by quarantine.

CG, ACP and CC pose an imminent peril to the health and welfare of the Louisiana commercial citrus industry due to their ability to infest rutaceous plants. This industry has a farm value of \$2.4-\$5 million in southeastern Louisiana in the form of citrus nursery stock, and \$5.1 million in the form of commercial citrus fruit in the state. CG renders the fruit unmarketable and ultimately causes the death of infested plants. The ACP moves CG from one plant to another, thereby infesting new plants and spreading CG. CC causes premature leaf and fruit drop, twig dieback and tree decline in citrus trees and is spread by wind-driven rain or through the movement of infected plants. Failure to prevent, control, or eradicate these pests threatens to destroy Louisiana's commercial citrus industry and the growing and harvesting of citrus by citizens of Louisiana for their own private use.

Louisiana's commercial citrus industry adds \$7.5-\$10 million dollars to the state's agriculture economy each year. Sales of citrus trees and plants by nursery stock dealers to private individuals also are important to the state's economy. The loss of the state's commercial citrus industry and privately owned citrus trees and fruit would be devastating to the state's economy and to its private citizens. The quarantines established by these emergency regulations are necessary to prevent the spread of CG, ACP and CC to citrus production areas in Louisiana that are outside of the current areas where these pests have been found.

For these reasons the outbreak of CG, ACP and CC in Louisiana present an imminent peril to the health, safety and welfare of Louisiana's citizens and the state's commercial and private citrus industry. As a result of this imminent peril, the Department of Agriculture and Forestry hereby exercises its full and plenary power pursuant to R.S. 3:1652 to deal with crop and fruit pests and contagious and infectious crop

and fruit diseases by imposing the quarantines set out in these emergency regulations.

This Rule shall have the force and effect of law five days after its promulgation in the official journal of the state and will remain in effect 120 days, unless renewed by the commissioner of agriculture and forestry or until permanent rules are promulgated in accordance with law.

## Title 7

### AGRICULTURE AND ANIMALS

#### Part XV. Plant Protection and Quarantine

##### Chapter 1. Crop Pests and Diseases

##### Subchapter B. Nursery Stock Quarantines

##### §127. Citrus Nursery Stock, Scions and Budwood

A. - C.6. ...

D. Citrus Greening Disease Quarantine

1. The department issues the following quarantine because the state entomologist has determined that citrus greening disease (CG), also known as huanglongbing disease of citrus, caused by the bacterial pathogen *Candidatus liberibacter* spp., has been found in this state and may be prevented, controlled, or eradicated by quarantine.

2. Quarantined Areas

The quarantined areas in this state are the parishes of Orleans and Washington, and any other areas found to be infested with CG. The declaration of any other specific parishes or areas shall be published in the official journal of the state and in the *Louisiana Register*.

3. Regulated Materials. The following materials are hosts of CG and their movement is prohibited from CG-quarantined areas due to the presence of CG:

a. all plants and plant parts, including but not limited to nursery stock, cuttings, budwood, and propagative seed (but excluding fruit), of *Aegle marmelos*, *Aeglopsis chevalieri*, *Afraegle gabonensis*, *Afraegle paniculata*, *Amyris madrensis*, *Atalantia* spp. (including *Atalantia monophylla*), *Balsamocitrus dawei*, *Bergera* (= *Murraya*) *koenigii*, *Calodendrum capense*, *Choisya ternata*, *Choisya arizonica*, *X Citroncirus webberi*, *Citropsis articulata*, *Citropsis gillettiana*, *Citrus madrensis* (= *X Citrofortunella microcarpa*), *Citrus* spp., *Clausena anisum-olens*, *Clausena excavata*, *Clausena indica*, *Clausena lansium*, *Eremocitrus glauca*, *Eremocitrus hybrid*, *Esenbeckia berlandieri*, *Fortunella* spp., *Limonia acidissima*, *Merrillia caloxylon*, *Microcitrus australasica*, *Microcitrus australis*, *Microcitrus papuana*, *X Microcitronella* spp., *Murraya* spp., *Naringi crenulata*, *Pamburus missionis*, *Poncirus trifoliata*, *Severinia buxifolia*, *Swinglea glutinosa*, *Tetradium ruticarpum*, *Toddalia asiatica*, *Triphasia trifolia*, *Vepris* (= *Toddalia*) *lanceolata*, and *Zanthoxylum fagara*;

b. any other products, materials, articles, or means of conveyance, if an inspector determines that it presents a risk of spreading CG, and after the inspector provides written notification to the person in possession of the products, materials, articles, or means of conveyance that it is subject to the restrictions of the regulations.

#### E. Asian Citrus Psyllid Quarantine

1. The department issues the following quarantine because the state entomologist has determined that Asian citrus psyllid (ACP), *Diaphorina citri* kuwayama, has been found in this state and may be prevented, controlled, or eradicated by quarantine.

##### 2. Quarantined Areas

a. The United States Department of Agriculture (USDA) has quarantined the entire state of Louisiana for interstate movement of regulated materials.

b. The department has quarantined the following areas within this state for intrastate movement of regulated materials: the parishes of Jefferson, Orleans, Lafourche, Plaquemines, St. Bernard, St. Charles, St. James, St. Tammany, Tangipahoa, Terrebonne, and any other areas found to be infested with ACP. The declaration of any other specific parish or areas shall be published in the official journal of the state and in the *Louisiana Register*.

3. Regulated Materials. The following materials are hosts of ACP and the interstate and intrastate movement of these materials is prohibited from the ACP-quarantined areas listed in Section E2. due to the presence of ACP:

a. All plants and plant parts, including but not limited to nursery stock, cuttings, and budwood, except seed and fruit, of: *Aegle marmelos*, *Aeglopsis chevalieri*, *Afraegle gabonensis*, *Afraegle paniculata*, *Amyris madrensis*, *Atalantia* spp. (including *Atalantia monophylla*), *Balsamocitrus dawei*, *Bergera* (=Murraya) *koenigii*, *Calodendrum capense*, *Choisya ternata*, *Choisya arizonica*, *X Citroncirus webberi*, *Citropsis articulata*, *Citropsis gilletiana*, *Citrus madurensis* (=X *Citrofortunella microcarpa*), *Citrus* spp., *Clausena anisum-olens*, *Clausena excavata*, *Clausena indica*, *Clausena lansium*, *Eremocitrus glauca*, *Eremocitrus hybrid*, *Esenbeckia berlandieri*, *Fortunella* spp., *Limonia acidissima*, *Merrillia caloxylon*, *Microcitrus australasica*, *Microcitrus australis*, *Microcitrus papuana*, X *Microcitronella* spp., *Murraya* spp., *Naringi crenulata*, *Pamburus missionis*, *Poncirus trifoliata*, *Severinia buxifolia*, *Swinglea glutinosa*, *Tetradium ruticarpum*, *Toddalia asiatica*, *Triphasia trifolia*, *Vepris* (=Toddalia) *lanceolata*, and *Zanthoxylum fagara*.

b. Any other products, materials, articles, or means of conveyance, if an inspector determines that it presents a risk of spreading ACP, and after the inspector provides written notification to the person in possession of the products, materials, articles, or means of conveyance that it is subject to the restrictions of the regulations.

c. Regulated materials originating from ACP-quarantined areas are prohibited entry into or through free areas of Louisiana, except as provided in subsection (d) of this section.

d. Exceptions. To be eligible to move from quarantined areas, regulated materials must meet the following requirements.

i. Fruit may move interstate with no additional requirements. Fruit may move intrastate from areas quarantined for ACP to citrus-producing areas not under quarantine for ACP if cleaned using normal packinghouse procedures.

ii. Regulated culinary and decorative materials such as fresh curry leaves (*Bergera* (=Murraya) *koenigii*) intended for consumption, (instead of the treatments

specified in Subparagraph b of this Paragraph), or mock orange leaves (*Murraya paniculata*) incorporated into leis or floral arrangements, must be treated prior to interstate or intrastate movement in accordance with the Animal and Plant Health Inspection Service's (APHIS) treatment schedule T101-n-2 (methyl bromide fumigation treatment for external feeding insects on fresh herbs) at the times and rates specified in the treatment manual and must be safeguarded until movement. As an alternative to methyl bromide fumigation, regulated materials originating from an area not quarantined for CG may be irradiated in accordance with 7 CFR 305.

iii. Nursery stock of regulated plants listed in 3a. may be moved in accordance with the following requirements.

(a). Nursery stock of regulated plants may be moved interstate if moved in accordance with all requirements of 7 CFR 301.76 and the Citrus Nursery Stock Protocol. Persons wishing to move nursery stock interstate must enter into a compliance agreement with APHIS to move regulated materials. Compliance agreements may be arranged by contacting the Louisiana State Plant Health Director, PPQ-APHIS-USDA, at 4354 South Sherwood Blvd., Suite 150D, Baton Rouge, LA 70816, or telephone (225) 298-5410.

(b). Nursery stock of regulated plants may be moved intrastate from ACP quarantined areas to non-quarantined areas of Louisiana if moved in accordance with conditions set forth in a departmental compliance agreement. Any person engaged in the business of growing or handling regulated materials must enter into a compliance agreement with the department if the regulated materials are to be moved to ACP-free areas of Louisiana.

#### F. Citrus Canker Disease Quarantine

1. The department issues the following quarantine because the state entomologist has determined that citrus canker disease (CC), caused by the bacterial pathogen *Xanthomonas axonopodis* pv. *citri* (Xac A, A\* and AW) with synonyms *X. citri* pv. *citri*, or *X. citri* subsp. *citri* or *X. campestris* pv. *citri* or *X. smithii* subsp. *citri*; and *X. axonopodis* pv. *aurantifolii* (Xac B & C) with a synonym *X. fuscans* subsp. *aurantifolii*, has been found in this state and may be prevented, controlled, or eradicated by quarantine.

2. No regulated materials as defined in this Subsection shall be moved out of any area of this state that is listed in this subsection as a quarantined area for CC, except as provided in this subsection.

3. Any person violating this quarantine shall be subject to imposition of the remedies and penalties provided for in R.S. 3:1653 for any violation of this quarantine.

4. Quarantined areas in this state include:

a. the entire parish of Orleans;

b. the portions of Jefferson, Plaquemines and St. Charles Parishes bounded by a line beginning at the intersection of the Orleans and Plaquemines Parish line located in the center of the Mississippi River near St. Bernard State Park; then moving west, following the Orleans Parish line to the intersection of the Orleans Parish line with River Road; then moving west on River Road and following River Road parallel to the western border of the Mississippi River to the point where River Road becomes Highway 11; then following Highway 11 until it reaches the point

immediately east of East Walker Road; then moving west following East Walker Road and crossing Highway 23 to the intersection of Highway 23 and Walker Road; then moving west following Walker Road to the intersection of East Bayou Road; then moving north following East Bayou Road to the intersection of the service road servicing the intracoastal waterway west closure complex; then moving west-southwest along an imaginary line that intersects with the Jefferson Parish line running through Lake Salvador; then moving northeast, following the Jefferson Parish line to the intersection of the parish line with Highway 18; then moving southwest following Highway 18 (River Road) to the intersection of Interstate Highway 310; then moving north following Interstate Highway 310 across the Mississippi River and continuing on to the Interstate Highway 310/Interstate Highway 10 interchange; then moving east following Interstate Highway 10 to its intersection with the Jefferson Parish line; then moving north following the Jefferson Parish line until reaching the south shoreline of Lake Ponchartrain; then moving east following the south shoreline of Lake Ponchartrain until its intersection with the Orleans Parish line; then moving south following the Orleans Parish line and following said parish line to the point of beginning;

c. a declaration of quarantine for CC covering any other specific parishes or areas of this state shall be published in the official journal of the state and in the *Louisiana Register*.

5. Regulated materials are hosts of CC and their movement is prohibited from quarantined areas due to the presence of CC. Regulated materials include:

a. all plants or plant parts, including fruit and seeds, of any of the following: all species, clones, cultivars, strains, varieties, and hybrids of the genera *Citrus* and *Fortunella*, and all clones, cultivars, strains, varieties, and hybrids of the species *Clausena lansium*, and *Poncirus trifoliata*, and *Swinglea glutinosa*. The most common of these are: lemon, pummelo, grapefruit, key lime, persian lime, tangerine, satsuma, tangor, citron, sweet orange, sour orange, mandarin, tangelo, ethrog, kumquat, limequat, calamondin, trifoliolate orange, tabog, and wampi;

b. all containerized citrus nursery stock plants of all types listed in 3.a above;

c. grass, plant, and tree clippings;

d. any other product, article, or means of conveyance, of any character whatsoever, not covered by paragraph (a) of this Section, when it is determined by an inspector that it presents a risk of spread of citrus canker and the person in possession thereof has actual notice that the product, article, or means of conveyance is subject to the provisions of this CC quarantine.

6. To be eligible to move from quarantined areas to non-quarantined areas within or outside of Louisiana, regulated materials must meet the following requirements.

a. Regulated fruit may be moved intrastate from a quarantined area for processing into a product other than fresh fruit if all of the following conditions are met.

i. The regulated fruit is accompanied by a document that states the location of the grove in which the

regulated fruit was produced, the variety and quantity of regulated fruit being moved intrastate, the address to which the regulated fruit will be delivered for processing, and the date the intrastate movement began.

ii. The regulated fruit and any leaves and litter are completely covered, or enclosed in containers or in a compartment of a vehicle, during the intrastate movement.

iii. The vehicles, covers, and any containers used to carry the regulated fruit intrastate are treated in accordance with federal requirements before leaving the premises where the regulated fruit is unloaded for processing.

iv. All leaves, litter, eliminations, and culls collected from the shipment of regulated fruit at the processing facility are either incinerated at the processing facility or buried at a public landfill that is fenced, prohibits the removal of dumped material, and covers dumped material with dirt at the end of every day that dumping occurs.

b. Regulated fruit may be moved intrastate from a quarantined area for packing, either for subsequent interstate movement with a limited permit or for export from the United States, if all of the following conditions are met:

i. The regulated fruit is accompanied by a document that states the location of the multi-block identification in which the regulated fruit was produced, the variety and quantity of regulated fruit being moved intrastate, the address to which the regulated fruit will be delivered for packing, and the date the intrastate movement began.

ii. The regulated fruit and any leaves and litter are completely covered, or enclosed in containers or in a compartment of a vehicle, during the intrastate movement.

iii. The vehicles, covers, and any containers used to carry the regulated fruit intrastate are treated in accordance with federal requirements before leaving the premises where the regulated fruit is unloaded for packing.

iv. Any equipment that comes in contact with the regulated fruit at the packing plant is treated in accordance with federal requirements before being used to handle any fruit eligible for interstate movement to commercial citrus-producing areas.

v. All leaves and litter collected from the shipment of regulated fruit at the packing plant are either incinerated at the packing plant or buried at a public landfill that is fenced, prohibits the removal of dumped material, and covers dumped material with dirt at the end of every day that dumping occurs. All culls collected from the shipment of regulated fruit are either processed into a product other than fresh fruit, incinerated at the packing plant, or buried at a public landfill that is fenced, prohibits the removal of dumped material, and covers dumped material with dirt at the end of every day that dumping occurs. Any culls moved intrastate for processing must be completely covered, or enclosed in containers or in a compartment of a vehicle, during the intrastate movement, and the vehicles, covers, and any containers used to carry the regulated fruit must be treated in accordance with federal requirements before leaving the premises where the regulated fruit is unloaded for processing.

c. Regulated fruit produced in a quarantined area or moved into a quarantined area for packing may be moved interstate with a certificate issued and attached in accordance with federal requirements if all of the following conditions are met.

i. The regulated fruit was packed in a commercial packinghouse whose owner or operator has entered into a compliance agreement with USDA-APHIS-PPQ in accordance with federal requirements.

ii. The regulated fruit was treated in accordance with federal requirements.

iii. The regulated fruit is practically free of leaves, twigs, and other plant parts, except for stems that are less than 1 inch long and attached to the fruit.

iv. If the fruit is repackaged after being packed in a commercial packinghouse and before it is moved interstate from the quarantined area, the person that repackages the fruit must enter into a compliance agreement with USDA-APHIS-PPQ and must issue and attach a certificate for the interstate movement of the fruit in accordance with federal requirements.

d. Regulated fruit that is not eligible for movement under Clause iii of this Section may be moved interstate only for immediate export. The regulated fruit must be accompanied by a limited permit issued in accordance with federal requirements and must be moved in a container sealed by USDA-APHIS-PPQ directly to the port of export in accordance with the conditions of the limited permit.

e. Grass, tree, and plant clippings may be moved intrastate from the quarantined area for disposal in a public landfill, for composting in a recycling facility, or treatment at a treatment facility, including livestock feed heat treatment facilities, if all of the following conditions are met:

i. The public landfill, recycling facility, or treatment location is located within the quarantined area.

ii. The grass, tree, or plant clippings are completely covered during the movement from the quarantined area to the public landfill, recycling facility, or treatment facility.

iii. Any public landfill used is fenced, prohibits the removal of dumped material, and covers dumped material with dirt at the end of every day that dumping occurs.

f. All vehicles, equipment, and other articles used in providing inspection, maintenance, harvesting, or related services in any grove containing regulated plants or regulated trees, or in providing landscaping or lawn care services on any premises containing regulated plants or regulated trees, must be treated in accordance with federal requirements upon leaving the grove or premises. All personnel who enter the grove or premises to provide these services must be treated in accordance with federal requirements upon leaving the grove or premises.

g. Regulated nursery stock may be moved intrastate or interstate from a quarantined area if all of the following conditions are met:

i. The nursery in which the nursery stock is produced has entered into a compliance agreement in which it agrees to meet the relevant construction standards, sourcing and certification requirements, cleaning, disinfecting, and safeguarding requirements, labeling requirements, and recordkeeping and inspection

requirements specified in federal regulations. The compliance agreement may also specify additional conditions under which the nursery stock must be grown, maintained, and shipped, as determined by regulatory officials, to prevent the dissemination of citrus canker. The compliance agreement will also specify that regulatory officials may amend the agreement;

ii. An inspector has determined that the nursery has adhered to all terms and conditions of the compliance agreement;

iii. The nursery stock is accompanied by a certificate issued in accordance with federal regulations;

iv. The nursery stock is completely enclosed in a sealed container that is clearly labeled with the certificate and is moved in that container;

v. A copy of the certificate is attached to the consignee's copy of the accompanying waybill.

h. Regulated nursery stock produced in a nursery located in a quarantined area that is not eligible for movement under this section may be moved intrastate or interstate only for immediate export. The regulated nursery stock must be accompanied by a limited permit issued in accordance with federal regulations and must be moved in a container sealed by USDA-APHIS-PPQ directly to the port of export in accordance with the conditions of the limited permit.

i. Regulated seed may be moved intrastate or interstate from a quarantined area if all of the following conditions are met:

i. The source plants are not from an area quarantined for citrus greening;

ii. Euring the two years before the movement date, no plants or plant parts infected with or exposed to citrus canker were found in the grove or nursery producing the fruit from which the regulated seed was extracted.

iii. The regulated seed was treated in accordance with federal regulations.

iv. The regulated seed is accompanied by a certificate issued in accordance with federal regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1652.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agricultural and Environmental Sciences, LR 11:320 (April 1985), amended by the Department of Agriculture and Forestry, Office of Agriculture and Environmental Sciences, LR 39:

Mike Strain DVM  
Commissioner

1311#047

## DECLARATION OF EMERGENCY

### Department of Children and Family Services Economic Stability Section

Louisiana Student Financial Assistance Grants  
(LAC 67:III.5599)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B), the Department of Children and Family Services (DCFS) proposes to adopt LAC 67:III, Subpart 15, Temporary Assistance for Needy Families

(TANF) Initiatives, Chapter 55, TANF Initiatives, Section 5599, Louisiana Student Financial Assistance Grants. Adoption is pursuant to the authority granted to the department by the TANF block grant. This emergency rule shall be effective November 1, 2013 and shall remain in effect for a period of 120 days.

The adoption of Section 5599 is necessary to govern the collection of eligible tuition expenditures for low income students that may be counted as Maintenance of Effort (MOE) for the TANF grant.

The department considers emergency action necessary to facilitate the expenditure of TANF funds. The authorization to promulgate emergency rules to facilitate the expenditure of TANF funds is contained in Act 14 of the 2013 Regular Session of the Louisiana Legislature.

#### **Title 67**

### **SOCIAL SERVICES**

#### **Part III. Economic Stability and Self-Sufficiency**

#### **Subpart 15. Temporary Assistance for Needy Families (TANF) Initiatives**

#### **Chapter 55. TANF Initiatives**

#### **§5599. Louisiana Student Financial Assistance Grants**

A. The department, through an agreement with the Louisiana Office of Student Financial Assistance (LOSFA), shall collect information on tuition assistance expenditures provided to eligible low income students who are pursuing postsecondary education for the purpose of claiming eligible expenditures that may count as maintenance of effort (MOE) effective TANF state plan FY 2011 for the Temporary Assistance for Needy Families (TANF) grant. The eligible tuition assistance expenditures that may be claimed as MOE are from the following programs.

*Louisiana Go Grants*—a need-based student financial aid grant that supports nontraditional and low income students in their pursuit of postsecondary education. To receive the *Go Grants*, a student must be receiving a federal Pell Grant and have remaining financial need, as determined in accordance with a formula established by the Louisiana Board of Regents. The formula for determining financial need is subject to change on a yearly basis in order to ensure that the greatest number of students will benefit from the funds appropriated for the program by the Louisiana Legislature.

*Taylor Opportunity Program for Students (TOPS)*—a state scholarship program for Louisiana residents who attend Louisiana postsecondary institutions.

B. These services meet TANF goal three, to prevent and reduce the incidence of out-of-wedlock pregnancies, by providing financial aid to eligible students who are pursuing postsecondary education. The services provide the students with the tools necessary to reduce risky behaviors and increase positive decision making.

C. Financial eligibility for these services attributable to TANF/maintenance of effort (MOE) funds is limited as follows.

1. Certification for TANF MOE for Go Grant expenditures will be those students who receive Pell Grants

and have a remaining financial need and are defined as dependent by the U.S. Department of Education. The amount used for TANF maintenance of effort is not duplicated in determining match or maintenance of effort for any other program.

2. TANF eligibility for students receiving TOPS will be determined by receipt of a Go Grants. Certification for TANF MOE for TOPS expenditures will be for those students who simultaneously receive TOPS and Go Grants and are defined as dependent by the U.S. Department of Education.

D. Services are considered non-assistance by the department.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., P.L. 104-193, and R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Economic Stability Section, LR 39:

Suzy Sonnier  
Secretary

1311#017

### **DECLARATION OF EMERGENCY**

#### **Department of Economic Development Office of the Secretary Office of Business Development and**

#### **Louisiana Economic Development Corporation**

Seed Capital Program (LSCP) and Seed Capital Program for the State Small Business Credit Initiative (SSBCI) Program (LAC 19:VII.7713 and 8713)

The Louisiana Department of Economic Development, Office of the Secretary, Office of Business Development, and the Louisiana Economic Development Corporation, pursuant to the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and under the authority of R.S. 36:104, 36:108, 51:2302, and 51:2312, are amending, supplementing and expanding portions of the rules of the Louisiana Seed Capital Program (LSCP) provided in LAC 19:VII.Chapter 77, and the Seed Capital Program for the State Small Business Credit Initiative (SSBCI) Program provided in LAC 19:VII.Chapter 87; amending particularly §7713.B.1, and §8713.B and C, regarding the maximum total amount of a Louisiana Economic Development Corporation (LEDC) match investment in an eligible seed venture capital fund. These amended rules, adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., shall become effective October 20, 2013, and shall remain in effect for the maximum period allowed under the Act, or until the adoption of a final Rule, whichever occurs first.

The Department of Economic Development, Office of the Secretary, Office of Business Development, and the Louisiana Economic Development Corporation, have found an immediate need to amend, supplement and expand

§7713.B.1, and §8713.B and C, of the rules of the Louisiana Seed Capital Program (LSCP) and the Seed Capital Program for the State Small Business Credit Initiative (SSBCI) Program, increasing the maximum total amount of an LEDC match investment in an eligible seed venture capital fund. The amendments to these rules will enhance and expand economic development in Louisiana; will stimulate the flow of capital and other financial assistance for the sound financing of the development, expansion, and retention of business concerns in Louisiana; will provide higher levels of employment, income growth, and expanded economic opportunities in all areas of our state; and will further help secure the creation or retention of jobs created by businesses in Louisiana. Without the program upgrades contained in this Emergency Rule the public welfare may be harmed as the result of the loss of a currently needed third distribution of federal SSBCI funds in order to enhance the state's business investment and economic development projects creating economic growth in Louisiana and creating or retaining jobs that would improve the standard of living and enrich the quality of life for citizens of this state.

#### **Title 19**

### **CORPORATIONS AND BUSINESS**

#### **Part VII. Louisiana Economic Development Corporation**

##### **Subpart 11. Louisiana Seed Capital Program (LSCP)**

##### **Chapter 77. Louisiana Seed Capital Program (LSCP)**

##### **§7713. Investments**

A. - A.3. ...

B. Match Investment

1. A qualified or eligible fund may receive a match investment equal to \$1.00 of LEDC funds for each \$2.00 of funds privately raised by the applicant fund. The maximum total amount of an LEDC match investment in an eligible fund shall not exceed \$2,000,000.

B.2. - C.1. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 26:2254 (October 2000), amended by the Department of Economic Development Office of the Secretary, Office of Business Development and Louisiana Economic Development Corporation, LR 38:990 (April 2013), amended, LR 40:

##### **Chapter 87. Seed Capital Program for the State Small Business Credit Initiative (SSBCI) Program**

##### **§8713. Investments**

A. ...

B. A qualified or eligible fund may receive a match investment equal to \$1.00 of LEDC funds for each \$1.50 of funds privately raised by the applicant fund. The maximum total amount of an LEDC match investment in an eligible fund shall not exceed \$2,000,000.

C. LEDC investments made in a qualified seed capital fund will not exceed an initial investment of \$450,000, with up to four expected follow-up investments, but shall not exceed a total investment of \$2,000,000 per fund.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development and Louisiana Economic Development Corporation, LR 38:992 (April 2012), amended, LR 40:

Anne G. Villa  
Undersecretary

1311#002

### **DECLARATION OF EMERGENCY**

#### **Department of Economic Development Office of the Secretary Office of Business Development and**

#### **Louisiana Economic Development Corporation**

Small Business Loan and Guaranty Program (SBL and GP) and State Small Business Credit Initiative (SSBCI) Program (LAC 19:VII.109 and 309)

The Louisiana Department of Economic Development, Office of the Secretary, Office of Business Development, and Louisiana Economic Development Corporation, pursuant to the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and under the authority of R.S. 36:104, 36:108, 51:2302, and 51:2312, are amending, supplementing and expanding portions of the rules of the Small Business Loan and Guaranty Program (SBL and GP) provided in LAC 19:VII.Chapter 1, and the State Small Business Credit Initiative (SSBCI) Program provided in LAC 19:VII.Chapter 3; amending particularly §109.F.1, and §309.E.1, regarding the term periods of various types of Louisiana Economic Development Corporation (LEDC) loan guaranties. These rules, adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., shall become effective October 20, 2013, and shall remain in effect for the maximum period allowed under the Act, or until the adoption of a final Rule, whichever occurs first.

The Department of Economic Development, Office of the Secretary, Office of Business Development, and Louisiana Economic Development Corporation, have found an immediate need to amend, supplement and expand §109.F.1, and §309.E.1, of the rules of the Small Business Loan and Guaranty Program (SBL and GP) and the State Small Business Credit Initiative (SSBCI) Program, regarding the term periods of various types of LEDC loan guaranties, including revolving lines of credit, equipment term loans, and real estate term loans. The amendments to these rules will enhance and expand economic development in Louisiana; will stimulate the flow of capital and other financial assistance for the sound financing of the development, expansion, and retention of small business concerns in Louisiana; and will further help secure the creation or retention of jobs created by small businesses in Louisiana. Without the program upgrades contained in this Emergency Rule the public welfare may be harmed as the result of the loss of a currently needed third distribution of

federal SSBCI funds in order to enhance the state's business investment and economic development projects creating economic growth in Louisiana and creating or retaining jobs that would improve the standard of living and enrich the quality of life for citizens of this state.

**Title 19**

**CORPORATIONS AND BUSINESS**

**Part VII. Louisiana Economic Development**

**Corporation**

**Subpart 1. Small Business Loan and Guaranty Program (SBL and GP)**

**Chapter 1. Loan and Guaranty Policies for the Small Business Loan and Guaranty Program (SBL and GP)**

**§109. General Loan, Credit, Guaranty and Participation Provisions**

A. - E.4. ...

F. Terms

1. Maturity, collateral, and other loan terms shall be negotiated between the borrower and the applicant/lending institution, and the LEDC shall have an opportunity to approve the terms of such loans prior to the closing; but guaranty term periods with regard to various types of loan guaranties shall be limited as follows:

a. for revolving lines of credit (RLOC) guaranty term periods may extend for up to and not exceed 7 years;

b. for equipment term loans guaranty term periods may extend for up to and not exceed 10 years;

c. for real estate term loans guaranty term periods may extend for up to and shall not exceed 25 years.

G. - H.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 15:448 (June 1989), amended LR 23:41 (January 1997), LR 26:2256 (October 2000), amended by the Department of Economic Development, Office of the Secretary, Office of Business Development and Louisiana Economic Development Corporation, LR 38:995 (April 2012), LR 40:

**Chapter 3. Loan and Guaranty Policies for the State Small Business Credit Initiative (SSBCI) Program**

**§309. General Loan, Credit, Guaranty and Participation Provisions**

A. - D.1.b. ...

E. Terms

1. For loan guaranties included in this Chapter 3 program, all of the provisions contained in §109.F.1.a, b and c of the Small Business Loan and Guaranty Program, with regard to term periods of various types of loan guaranties, shall also apply to this Chapter 3 program.

F. - F.2. ...

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development and Louisiana Economic Development Corporation, LR 38:999 (April 2012), amended LR 40:

Anne G. Villa  
Undersecretary

**DECLARATION OF EMERGENCY**

**Board of Elementary and Secondary Education**

Bulletin 741—Louisiana Handbook for School Administrators (LAC 28:CVX.701, 2301, and 2303)

The Board of Elementary and Secondary Education (BESE) has exercised the emergency provision in accordance with R.S. 49:953(B), the Administrative Procedure Act, and R.S. 17.6 to amend LAC 28:CVX, *Bulletin 741—Louisiana Handbook for School Administrators*, §701, Maintenance and Use of System Records and Reports, §2301, Content Standards, and §2303, Planning and Instruction. This Declaration of Emergency, effective October 17, 2013, will remain in effect for a period of 120 days.

Revisions to §701 provide urgent clarification and enhancements needed to comply with federal and state laws related to the security and safety of personal student data. The implementation of these policy revisions as Emergency Rule is necessary to immediately address the welfare of students in the current 2013-2014 school year by ensuring that student personal information will be safe and secure and to prevent imminent risk of lost or endangered student data. The policy revision ensures that any agreements between local school systems or the Louisiana Department of Education (LDE) and data storage companies or organizations shall immediately adhere to all applicable state and federal laws and that student identification numbers shall not include or be based on Social Security numbers.

R.S. 17:24.4 requires the LDE, with the approval of BESE, to establish content standards. Current policy requires local school systems to provide instruction aligned to state-approved content standards. The changes to §2301 provide local school systems with clear and immediate autonomy and flexibility to develop and adopt instructional materials aligned to state standards, which local school systems have already begun teaching in Louisiana public schools this school year. It also immediately clarifies that local school systems shall not be required to adopt any instructional materials not of their own choosing and that instruction may exceed state-approved standards. The Emergency Rule instantly resolves a currently ambiguous policy without having to delay critical and time-sensitive decisions, many of which directly affect instruction being provided in classrooms right now, pending promulgation of a final Rule.

Revisions to §2303 require local education agencies to allow parents to immediately examine texts, review reading lists for high school English courses, and request local school systems to exempt their child from reading such content. The revisions also prohibit the LDE from issuing a state-required list of texts. This Emergency Rule provide parents with immediate access to student texts and reading lists to ensure parental oversight of each child's academic welfare, including texts that may need to be accessed and reviewed prior to the conclusion of the regular rule-making process.

A delay in promulgating rules could allow possible adverse impact on the academic welfare of Louisiana public school students.

**Title 28  
EDUCATION**

**Part CXV. Bulletin 741—Louisiana Handbook for  
School Administrators**

**Chapter 7. Records and Reports**

**§701. Maintenance and Use of System Records and Reports**

A. The LEA and school shall maintain accurate and current information on students, personnel, instructional programs, facilities, and finances.

B. The maintenance, use, and dissemination of information included in system and school records and reports shall be governed by written policies adopted by the local educational governing authority and/or other applicable educational governing authorities. The policies shall conform to the requirements of all applicable state and federal laws, including, but not limited to, the Louisiana Public Records Act, R.S. 44:1 et seq., the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232q and 45 CFR 99.1 et seq., the Individual with Disabilities Education Act, 20 U.S.C. 1400 et seq., 17:1941 et seq., and R.S. 17:1237.

1. Any agreements entered into between an LEA and a data storage company or organization shall provide for adherence to all applicable state and federal laws regarding the maintenance, use, and dissemination of personally identifiable student data.

2. In maintaining, using, and disseminating student data received from or reported by LEAs, the LDE shall adhere to and require any contracted data storage providers to adhere to all applicable state and federal laws, including, but not limited to, the Louisiana Public Records Act, R.S. 44:1 et seq., the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232q and 45 CFR 99.1 et seq., the Individual with Disabilities Education Act, 20 U.S.C. 1400 et seq., 17:1941 et seq., and R.S. 17:1237.

3. Student identification numbers used by LDE for purposes of the assessment of student learning shall be, by the beginning of the 2014-2015 school year, distinctive numerical identifiers assigned to every student enrolled in Louisiana public schools. Such identifiers shall not include or be based on Social Security numbers and shall be used for students as they transition through or transfer between Louisiana public schools.

4. Information files and reports shall be stored with limited accessibility and shall be kept reasonably safe from damage and theft.

C. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:93, R.S. 17:411, and R.S. 17:415.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1268 (June 2005), amended LR 37:1380 (May 2011), LR 40:

**Chapter 23. Curriculum and Instruction**

**Subchapter A. Standards and Curricula**

**§2301. Content Standards**

A. Each LEA shall provide instruction aligned to BESE-approved standards and shall have the autonomy and flexibility to develop, adopt, and utilize instructional materials that best support their students' achievement of the standards. LEAs may provide instruction that supplements or exceeds BESE-approved standards.

B. LEAs shall not be required to adopt or utilize any instructional materials not of their own choosing, including any that may be recommended, endorsed, or supported by any federal or state program or agency.

C. The Louisiana content standards shall be subject to review and revision to maintain rigor and high expectations for teaching and learning. Such review of each content area shall occur at least once every seven years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1288 (June 2005), amended LR 31:3070 (December 2005), LR 33:429 (March 2007), LR 39:2213 (August 2013), LR 40:

**§2303. Planning and Instruction**

A. Course content shall be age-appropriate and unbiased with regard to the treatment of race, sex, roles, religions, ethnic origins, and political beliefs.

1. Each LEA shall permit parents to examine texts to be used in their child's class.

2. Each LEA shall provide parents and legal custodians of students enrolled in high school English courses a list of reading materials to be used in that school year. Parents and legal custodians may request that the LEA exempt their child from reading such content.

3. The LDE shall not issue any state-required list of texts that LEAs or educators must include in course content. This shall not relieve LEAs of any obligations to provide instruction of United States historical documents specifically required by state statute.

B. - H. ...

AUTHORITY NOTE: Promulgated in accordance with Louisiana Constitution Art. VIII Preamble and R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1288 (June 2005), amended LR 39:2213 (August 2013), LR 40:

Charles E. "Chas" Roemer, IV  
President

1311#001

**DECLARATION OF EMERGENCY**

**Student Financial Assistance Commission  
Office of Student Financial Assistance**

Scholarship/Grant Programs—Degree Completion  
(LAC 28:IV.701, 705, 805, and 1903)

The Louisiana Student Financial Assistance Commission (LASFAC) is exercising the emergency provisions of the Administrative Procedure Act (R.S. 49:953(B)) to amend and repromulgate the rules of the scholarship/grant programs (R.S. 17:3021-3025, R.S. 3041.10-3041.15, and R.S. 17:3042.1.1-3042.8, R.S. 17:3048.1, R.S. 56:797.D(2)).

This rulemaking provides the TOPS continuation requirements for students who earn a certificate or diploma in a technical or nonacademic program, an associate's degree in a technical or academic program, or a baccalaureate degree and who have remaining TOPS eligibility.

This rulemaking also provides a requirement that participating colleges and universities report a student's completion of a program of study, including whether the

program was technical or academic, the credential awarded (certificate, diploma, associate's, baccalaureate), and the semester of completion.

This Emergency Rule is necessary to implement changes to the scholarship/grant programs to allow the Louisiana Office of Student Financial Assistance and state educational institutions to effectively administer these programs. A delay in promulgating rules would have an adverse impact on the financial welfare of the eligible students and the financial condition of their families. LASFAC has determined that this Emergency Rule is necessary in order to prevent imminent financial peril to the welfare of the affected students.

This Declaration of Emergency is effective October 17, 2013, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act. (SG14151E)

## Title 28 EDUCATION

### Part IV. Student Financial Assistance—Higher Education—Scholarship and Grant Programs

#### Chapter 7. Taylor Opportunity Program for Students (TOPS) Opportunity, Performance, and Honors Awards

##### §701. General Provisions

A. - E.11.c. ...

12. Repealed.

F. - G.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1, and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), amended LR 23:1645-1648 (December 1997), repromulgated LR 24:635 (April 1998), amended LR 24:1901 (October 1998), LR 25: 256 (February 1999), LR 26:67 (January 2000), LR 26:1262 (June 2000), LR 26:1995 (September 2000), LR 26:2000 (September 2000), repromulgated LR 27:1848 (November 2001), amended LR 28:447 (March 2002), LR 28:2331 (November 2002), LR 29:880 (June 2003), LR 29:2372 (November 2003), LR 30:1161 (June 2004), LR 31:2213 (September 2005), LR 35:228 (February 2009), LR 36:2854 (December 2010), LR 39:

##### §705. Maintaining Eligibility

A. - E.3. ...

F. Beginning with the 2012-2013 academic year (college), a student who successfully completes an associate's degree in an academic or non-academic program without having exhausted his period of award eligibility shall receive an award for the remainder of his eligibility if he enrolls in a program of study leading to a baccalaureate degree, to a vocational or technical certificate or diploma, or to a non-academic degree at an eligible college or university no later than the fall semester immediately following the first anniversary of the student's completion of an associate's degree and has met the requirements for continued eligibility set forth in §705.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:1905 (October 1998) amended LR 25:1091 (June 1999), LR 26:68 (January 2000), LR 26:689 (April 2000), LR 26:1997, 2002 (September 2000), repromulgated LR 27:1856 (November 2001), amended LR 28:774 (April 2002), LR 28:2332 (November 2002),

LR 29:880 (June 2003), LR 29:2373 (November 2003), LR 30:781 (April 2004), LR 30:1165 (June 2004), LR 30:2019 (September 2004), LR 31:3115 (December 2005), LR 33:438 (March 2007), LR 35:1489 (August 2009), LR 38:3160 (December 2012), LR 39:

#### Chapter 8. TOPS-Tech Award

##### §805. Maintaining Eligibility

A. - D.3. ...

E. Beginning with the 2012-2013 academic year (college), a student who successfully completes a vocational or technical certificate or diploma program or a non-academic degree program without having exhausted his period of award eligibility shall receive an award for the remainder of his eligibility if he enrolls in another program of study leading to a vocational or technical certificate or diploma or to a non-academic degree no later than the fall semester immediately following the first anniversary of the student's completion of a vocational or technical certificate or diploma program or of a non-academic degree program and has met the requirements for continued eligibility set forth in §805.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:1905 (October 1998) amended LR 25:1091 (June 1999), LR 26:68 (January 2000), LR 26:689 (April 2000), LR 26:1997, 2002 (September 2000), repromulgated LR 27:1856 (November 2001), amended LR 28:774 (April 2002), LR 28:2332 (November 2002), LR 29:880 (June 2003), LR 29:2373 (November 2003), LR 30:781 (April 2004), LR 30:1165 (June 2004), LR 30:2019 (September 2004), LR 31:3115 (December 2005), LR 33:438 (March 2007), LR 35:1489 (August 2009), LR 38:3160 (December 2012), LR 39:

#### Chapter 19. Eligibility and Responsibilities of Post-Secondary Institutions

##### §1903. Responsibilities of Post-Secondary Institutions

A. - A.2.h. ...

3. Beginning with the 2013-2014 academic year (college), an institution shall also report:

- a. a student's completion of program of study;
- b. whether the program of study was academic or technical;
- c. type of credential (degree, certificate, diploma, baccalaureate);
- d. semester of completion.

B. - G.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1, 17:3041.10-3041.15, 17:3041.21-3041.26 and R.S. 17:3048.1 and R.S. 17:3050.1-3050.4.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:645 (April 1998), amended LR 24:1914 (October 1998), LR 25:1459 (August 1999), LR 26:1998 and 2002 (September 2000), repromulgated LR 27:1864 (November 2001), amended LR 28:448 (March 2002), LR 28:775 (April 2002), LR 28:1760 (August 2002), LR 28:2333 (November 2002), LR 30:784 (April 2004), LR 30:1166 (June 2004), LR 31:40 (January 2005), LR 31:3111, 3114 (December 2005), LR 33:1340 (July 2007), LR 35:1233 (July 2009), LR 35:1490 (August 2009), LR 35:1491 (August 2009), LR 36:2857 (December 2010), LR 39:

George Badge Eldredge  
General Counsel

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## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Bureau of Health Services Financing

Abortion Facilities  
Licensing Standards  
(LAC 48:I.Chapter 44)

The Department of Health and Hospitals, Bureau of Health Services Financing repeals and replaces LAC 48:I.Chapter 44 in the Medical Assistance Program as authorized by R.S. 36:254 and R.S. 40:2175.1 et seq. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the licensing of abortion facilities in order to clarify the licensing requirements and staffing provisions (*Louisiana Register*, Volume 39, Number 8).

Acts 259 and 260 of the 2013 Regular Session of the Louisiana Legislature amended the laws governing abortion services and the Louisiana Children's Code. The department now proposes to repeal and replace the licensing standards governing outpatient abortion facilities in order to revise and clarify these provisions, and to comply with the provisions of Acts 259 and 260.

This action is being taken to promote the health and welfare of Louisiana citizens by assuring the health and safety of women seeking health care services at licensed abortion facilities. It is estimated that implementation of this Emergency Rule will have no programmatic costs for state fiscal year 2013-2014.

Effective November 20, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing repeals and replaces the provisions governing the licensing standards for abortion facilities.

#### Title 48

#### PUBLIC HEALTH—GENERAL

#### Part I. General Administration

#### Subpart 3. Licensing and Certification

#### Chapter 44. Abortion Facilities

#### Subchapter A. General Provisions

#### §4401. Definitions

*Abortion*—any surgical procedure performed, after pregnancy has been medically verified, with the intent to cause the termination of the pregnancy other than for the purpose of:

1. producing a live birth;
2. removing an ectopic pregnancy; or
3. removing a dead fetus caused by a spontaneous abortion.

*Administrator*—the person responsible for the day-to-day management, supervision, and operation of the outpatient abortion facility.

*Change of Ownership (CHOW)*—transfer of ownership to someone other than the owner listed on the initial licensing application or license renewal application.

*CRNA*—a certified registered nurse anesthetist licensed by the Louisiana State Board of Nursing who is under the supervision of the physician performing the abortion or an anesthesiologist who is immediately available if needed as defined in the medical staff bylaws and in accordance with applicable licensing boards.

*Department*—the Department of Health and Hospitals (DHH).

*First Trimester*—the time period from 6 to 14 weeks after the first day of the last menstrual period.

*General Anesthesia*—any drug, element, or other material which, when administered, results in a controlled state of unconsciousness accompanied by a partial or complete loss of protective reflexes, including a loss of ability to independently maintain an airway and respond purposefully to physical stimuli or verbal command.

*Gestational Age*—the age of the unborn child as measured by the time elapsed since the first day of the last menstrual period as determined by a physician and confirmed through the use of an ultrasound.

*HSS*—the Department of Health and Hospitals, Health Standards Section.

*Medical Director*—a physician who is responsible for all of the medical care provided to patients in the outpatient abortion facility, and for the ethical and professional practices of the medical staff.

*OPH*—the Department of Health and Hospitals, Office of Public Health.

*OSFM*—the Department of Public Safety and Corrections, Office of State Fire Marshal, Public Safety Services.

*Outpatient Abortion Facility*—any outpatient facility or clinic, other than a hospital as defined in R.S. 40:2102 or an ambulatory surgical center as defined in R.S. 40:2133, in which any second trimester or five or more first trimester abortions are performed per month.

*Patient*—the woman receiving services from an outpatient abortion facility.

*Physician*—a doctor who possesses a current license to practice medicine in Louisiana, is in good standing with the Louisiana State Board of Medical Examiners, and whose license does not restrict the doctor from performing the services at the outpatient abortion facility.

*Products of Conception*—placenta, amniotic sac or membrane, embryo, or fetal elements that result from a human pregnancy.

*Second Trimester*—the time period from 14 to 23 weeks after the first day of the last menstrual period.

*Secretary*—the secretary of the Louisiana Department of Health and Hospitals.

*Serious Harm*—an incident which involves:

1. unconsciousness;
2. physical pain evidenced by objective findings;
3. disfigurement;
4. loss or impairment of the function of a body member, organ, or mental faculty; or
5. severe emotional distress.

*Telecommunications*—any means of transmitting messages at a distance, including but not limited to:

1. telephones;
2. cell phones;
3. pagers; or
4. other similar devices which foster communication.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

#### **§4403. General Licensing Provisions**

A. It shall be unlawful for outpatient abortion facilities in the initial licensing application process to accept patients or provide abortion services until licensed by the Department of Health and Hospitals (DHH). The department is the only licensing authority for outpatient abortion facilities in Louisiana.

B. Types of Licenses. The department shall have the authority to issue the following types of licenses:

1. full initial license;
2. provisional initial license;
3. full renewal license; and
4. provisional renewal license.

C. An outpatient abortion facility shall be in compliance with all applicable federal, state, and local statutes, laws, rules, regulations, and ordinances, including department rules, regulations, and fees, governing or relating to outpatient abortion facilities, abortion or termination procedures, reporting requirements, ultrasound requirements, informed consent requirements or any other matter related to an abortion or abortion procedures before the outpatient abortion facility will be issued an initial license to operate.

D. An outpatient abortion facility license shall:

1. be issued only to the person or entity named in the initial licensing application;
2. be valid only for the outpatient abortion facility to which it is issued and only for the physical address named in the initial licensing application;
3. be valid for one year from the date of issuance, unless revoked or suspended, prior to that date, or unless a provisional initial license or provisional renewal license is issued;
4. expire on the last day of the twelfth month after the date of issuance, unless timely renewed by the outpatient abortion facility;
5. not be subject to sale, assignment, donation, or other transfer, whether voluntary or involuntary; and
6. be posted in a conspicuous place on the licensed premises at all times.

E. An outpatient abortion facility licensed by the department may only perform first and second trimester abortions, unless otherwise provided by law.

F. A separately licensed outpatient abortion facility shall not use a name which is substantially the same as the name of another such facility licensed by the department. An outpatient abortion facility shall not use a name which is likely to mislead the patient or their family into believing it is owned, endorsed, or operated by the state of Louisiana.

G. No branches, satellite locations, or offsite campuses shall be authorized for an outpatient abortion facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

#### **§4405. Initial Licensing Application Process**

A. The initial licensing application process includes submission and approval of plans and specifications (construction documents) and an initial licensing application packet, including but not limited to, a facility need review approval letter. No outpatient abortion facility shall accept patients or provide abortion services until in compliance with the provisions of this Chapter.

B. Plan Review Approval. All plans and specifications (construction documents) submitted by or on behalf of the outpatient abortion facility are required to be submitted and approved by the Office of State Fire Marshal (OSFM) as part of the licensing application process.

1. Applicants are required to refer to the OSFM for laws, rules, and editions of adopted codes and standards applicable to plan review by the OSFM.

2. One complete set of plans and specifications (construction documents) with application and review fee shall be submitted to the OSFM for review.

3. Plan review submittal to the OSFM shall be in accordance with R.S. 40:1574, LAC 55:V, Chapter 3, and the following.

a. Modifications to Physical Environment. Any proposed change to the physical environment shall require review for compliance with requirements applicable at the time of the proposed change. Normal maintenance, reroofing, and painting do not require plan review by the OSFM.

b. The specific requirements outlined in the physical environment Section of this Chapter.

c. Where services or treatment for four or more patients is provided, requirements applicable to ambulatory health care occupancies, as defined by the most recently state adopted edition of National Fire Protection Association (NFPA) 101, shall apply.

d. Where services or treatment for three or less patients is provided, requirements applicable to construction of business occupancies, as defined by the most recently state adopted edition of NFPA 101, shall apply.

4. Upon approval, one copy of the documents reviewed by the OSFM and one copy of the OSFM plan review letter shall be submitted to the department. Electronic transfer of documents by the OSFM to the department is allowed to satisfy this requirement.

5. Waivers. When a requirement of these rules regarding plan review would impose a hardship, financial or otherwise, but would not adversely affect the health and safety of any patient, the outpatient abortion facility may submit a waiver request to the department, with supporting documentation. The issuance of a waiver by the department does not apply to the OSFM requirements for approval, which must be addressed exclusively by the outpatient abortion facility with the OSFM or the state health officer, as appropriate to the subject matter.

C. Initial Licensing Application Packet. An initial licensing application packet for an outpatient abortion facility shall be obtained from the department. A complete initial licensing application packet shall be submitted to and approved by the department prior to an applicant providing abortion services as an outpatient abortion facility.

D. To be considered complete, the initial licensing application packet shall include the following:

1. a completed outpatient abortion facility initial licensing application and the non-refundable initial licensing fee;

2. a copy of the approval letter of the architectural facility plans for the outpatient abortion facility by the OSFM;

3. a copy of the on-site inspection report with approval for occupancy from the OSFM;

4. a copy of the health inspection report from the Office of Public Health (OPH);

5. an organizational chart identifying the name, position, and title of each person composing the governing body and key administrative personnel;

6. a floor sketch or drawing of the premises to be licensed;

7. a copy of the facility need review approval letter; and

8. any other documentation or information required by department for licensure.

E. If the initial licensing application packet is incomplete as submitted, the applicant shall be notified in writing of the missing information and shall have 90 calendar days from receipt of the notification to submit the additional requested information. If the additional requested information is not timely submitted to the department within 90 calendar days, the initial licensing application shall be closed. If an initial licensing application is closed, an applicant who is still interested in operating an outpatient abortion facility must submit a newly completed initial licensing application packet and a new non-refundable initial licensing fee to begin the initial licensing application process again, subject to any facility need review approval.

F. Initial Licensing Surveys. Upon receipt of a complete initial licensing application packet, the department shall conduct an on-site initial licensing survey prior to issuing a full initial license. The initial licensing survey shall be announced.

1. If it is determined that the applicant is not in compliance with all applicable federal, state, and local statutes, laws, rules, regulations, and ordinances, including department rules, regulations, and fees, governing or relating to outpatient abortion facilities, abortion or termination procedures, reporting requirements, ultrasound requirements, informed consent requirements or any other matter related to abortion or abortion procedures, and a potential threat to the health, safety, and welfare of the patients is presented, the department shall deny the initial licensing application.

2. If it is determined that the applicant is in compliance with all applicable federal, state, and local statutes, laws, rules, regulations, and ordinances, including department rules, regulations, and fees, governing or relating to outpatient abortion facilities, abortion or termination procedures, reporting requirements, ultrasound requirements, informed consent requirements or any other matter related to abortion or abortion procedures, the department shall issue a full initial license to the applicant.

G. Full Initial License. The full initial license issued by the department shall be valid until the expiration date shown on the license unless the license is revoked or suspended prior to that date.

1. If it is determined that the applicant is not in compliance with all applicable federal, state, and local statutes, laws, rules, regulations, and ordinances, including department rules, regulations, and fees, governing or relating to outpatient abortion facilities, abortion or termination procedures, reporting requirements, ultrasound requirements, informed consent requirements or any other matter related to abortion or abortion procedures, but the department, in its sole discretion determines that the noncompliance does not present a threat to the health, safety, and welfare of the patients, the department may issue a provisional initial license.

H. Provisional Initial License. The provisional initial license issued by the department shall be valid for a period not to exceed six months.

1. When a provisional initial license is issued by the department, the applicant shall submit a plan of correction to the department for approval and also shall be required to correct all deficiencies prior to the expiration of the provisional initial license.

2. Upon receipt of the applicant's plan of correction, the department shall conduct an unannounced follow-up survey, either on-site or by desk review, to ensure the applicant is in compliance with all applicable federal, state, and local statutes, laws, rules, regulations, and ordinances, including department rules, regulations, and fees, governing or relating to outpatient abortion facilities, abortion or termination procedures, reporting requirements, ultrasound requirements, informed consent requirements or any other matter related to abortion or abortion procedures.

a. Following the follow-up survey, if it is determined that the applicant has corrected all deficiencies and has maintained compliance during the period of the provisional license, the department shall issue a full initial license for the remainder of the year.

b. Following the follow-up survey, if it is determined that the applicant has failed to correct all deficiencies, the provisional initial license shall expire unless otherwise determined by the department. The applicant shall be required to submit a newly completed initial licensing application packet and a new non-refundable initial licensing fee to begin the initial licensing application process again subject to any facility need review approval.

I. Informal Reconsideration and Administrative Appeal. The outpatient abortion facility does not have the right to request an informal reconsideration and/or an administrative appeal of the issuance of a provisional initial license. An outpatient abortion facility that has been issued a provisional initial license is considered licensed and operational for the term of the provisional initial license. The issuance of a provisional initial license is not considered to be a denial of an initial licensing application, denial of a license renewal application, or license revocation for the purposes of this Chapter.

J. Informal Reconsideration. An outpatient abortion facility that has been issued a provisional initial license has the right to request an informal reconsideration regarding the validity of the deficiencies cited during the follow-up survey.

1. The request for an informal reconsideration must be in writing and received by HSS within five days of receipt of the statement of deficiencies. If a timely request for an informal reconsideration is received, HSS shall schedule the informal reconsideration and notify the outpatient abortion facility in writing.

2. The request for an informal reconsideration must identify each disputed deficiency or deficiencies and the reason for the dispute and include any documentation that demonstrates that the determination was made in error.

3. Correction of a deficiency or deficiencies cited in a follow-up survey shall not be the basis for an informal reconsideration.

K. Administrative Appeal. An outpatient abortion facility that has been issued a provisional initial license has the right to request an administrative appeal regarding the validity of the deficiencies cited during the follow-up survey.

1. The request for an administrative appeal must be in writing and received by the Division of Administrative Law (DAL), or its successor, within 15 days of receipt of the statement of deficiencies.

2. The request for an administrative appeal must identify each disputed deficiency or deficiencies and the reason for the dispute and include any documentation that demonstrates that the determination was made in error.

3. Correction of a deficiency or deficiencies cited in a follow-up survey shall not be the basis for an administrative appeal.

4. Upon expiration of the provisional initial license, the outpatient abortion facility shall immediately cease and desist providing abortion services unless the DAL, or its successor, issues a stay of the expiration.

5. Stay of the Expiration. The request for a stay of the expiration must be submitted with the request for an administrative appeal and received by the DAL, or its successor, within 15 days of receipt of the statement of deficiencies.

a. Following a contradictory hearing and only upon a showing that there is no potential harm to the patients being served by the outpatient abortion facility, the stay may be granted by the DAL, or its successor.

6. If a timely request for an administrative appeal is received, the DAL, or its successor, shall conduct the administrative appeal within 90 calendar days of the docketing of the administrative appeal. For good cause shown, the DAL, or its successor, may grant one extension, not to exceed 90 calendar days.

a. If the final decision of the DAL, or its successor, is to remove all deficiencies, the outpatient abortion facility's license shall be granted/re-instated upon the payment of any licensing fees, outstanding sanctions, or other fees due to the department.

b. If the final decision of the DAL, or its successor, is to uphold the deficiencies and affirm the expiration of the provisional initial license, the outpatient abortion facility shall:

i. immediately cease and desist providing abortion services as an outpatient abortion facility;

ii. return the outpatient abortion facility license to the department; and

iii. notify the department in writing of the secure and confidential location where the patient medical records will be stored, including the name, physical address, and contact person, within 10 days of the rendering of the administrative appeal judgment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

#### **§4407. Survey Activities**

A. Any applicant or outpatient abortion facility shall be subject to licensing surveys conducted by department surveyors to ensure that an applicant or outpatient abortion facility is in compliance with all applicable federal, state, and local statutes, laws, rules, regulations, and ordinances, including department rules, regulations, and fees, governing or relating to outpatient abortion facilities, abortion or termination procedures, reporting requirements, ultrasound requirements, informed consent requirements or any other matter related to abortion or abortion procedures, and also to ensure there is no present threat to the health, safety, and welfare of the patient.

B. Any applicant or outpatient abortion facility subject to licensing surveys conducted by the department shall:

1. allow department surveyors access to any and all requested documents and information on the licensed premises, including, but not limited to, patient medical records and outpatient abortion facility records;

2. allow department surveyors access to interview any staff or other persons as necessary or required; and

3. not interfere or impede the survey process for department surveyors while conducting any survey.

C. The department is entitled to access all books, records, or other documents maintained by or on behalf of the outpatient abortion facility on the licensed premises to the extent necessary to ensure compliance with this Chapter. Ensuring compliance includes permitting photocopying by the department or providing photocopies to the department of any records or other information by or on behalf of the outpatient abortion facility as necessary to determine or verify compliance with this Chapter.

D. Types of Surveys. The department shall have the authority to conduct the following types of surveys.

1. Initial Licensing Surveys. The department shall conduct an on-site initial licensing survey to ensure the applicant is in compliance with all applicable federal, state, and local statutes, laws, rules, regulations, and ordinances, including department rules, regulations, and fees, governing or relating to outpatient abortion facilities, abortion or termination procedures, reporting requirements, ultrasound requirements, informed consent requirements or any other matter related to abortion or abortion procedures prior to issuing a full initial license. All initial licensing surveys shall be announced.

2. Annual Licensing Surveys. The department shall conduct an annual licensing survey. All annual licensing surveys shall be unannounced.

3. Complaint Surveys. The department shall conduct complaint surveys when a complaint is lodged against an outpatient abortion facility in accordance with R.S. 40:2009.13 et seq. All complaint surveys shall be unannounced.

4. Follow-up Surveys. The department may conduct a follow-up survey to ensure the outpatient abortion facility has corrected all deficiencies cited in the previous survey and is in compliance with all applicable federal, state, and local statutes, laws, rules, regulations, and ordinances, including department rules, regulations, and fees, governing or relating to outpatient abortion facilities, abortion or termination procedures, reporting requirements, ultrasound requirements, informed consent requirements or any other matter related to abortion or abortion procedures. All follow-up surveys shall be unannounced.

E. Statement of Deficiencies. Following any survey, the department surveyors shall complete the statement of deficiencies documenting relevant findings including the deficiency, the applicable governing rule, and the evidence supporting why the rule was not met including, but not limited to, observations, interviews, and record review of information obtained during the survey. The outpatient abortion facility shall receive a copy of the statement of deficiencies.

1. Display. The following statements of deficiencies issued by the department to the outpatient abortion facility must be posted in a conspicuous place on the licensed premises:

- a. the most recent annual licensing survey statement of deficiencies; and
- b. any follow-up and/or complaint survey statement of deficiencies issued after the most recent annual licensing survey.

2. Public Disclosure. Any statement of deficiencies issued by the department to an outpatient abortion facility shall be available for disclosure to the public within 30 calendar days after the outpatient abortion facility submits an acceptable plan of correction to the deficiencies or within 90 days of receipt of the statement of deficiencies, whichever occurs first.

F. Plan of Correction. The department may require a plan of correction from an outpatient abortion facility following any survey wherein deficiencies have been cited. The fact that a plan of correction is accepted by the department does not preclude the department from pursuing other actions against the outpatient abortion facility as a result of the cited deficiencies.

G. Informal Reconsideration. The applicant and/or outpatient abortion facility shall have the right to request an informal reconsideration of any deficiencies cited during any initial licensing survey, annual licensing survey, and follow-up survey.

1. The request for an informal reconsideration must be in writing and received by HSS within 10 calendar days of receipt of the statement of deficiencies. If a timely request for an informal reconsideration is received, HSS shall schedule the informal reconsideration and notify the outpatient abortion facility in writing.

2. The request for an informal reconsideration must identify each disputed deficiency or deficiencies and the reason for the dispute and include any documentation that demonstrates that the determination was made in error.

3. Correction of the deficiency or deficiencies cited in any survey shall not be the basis for an informal reconsideration.

4. The outpatient abortion facility may appear in person at the informal reconsideration and may be represented by counsel.

5. The outpatient abortion facility shall receive written notice of the results of the informal reconsideration.

6. The results of the informal reconsideration shall be the final administrative decision regarding the deficiencies and no right to an administrative appeal shall be available.

H. Complaint Survey Informal Reconsideration. Pursuant to R.S. 40:2009.13 et seq., an outpatient abortion facility shall have the right to request an informal reconsideration of the validity of the deficiencies cited during any complaint survey and the complainant shall be afforded the opportunity to request an informal reconsideration of the findings.

1. The department shall conduct the informal reconsideration by desk review.

2. The outpatient abortion facility and the complainant shall receive written notice of the results of the informal reconsideration.

3. Except for the right to an administrative appeal provided in R.S. 40:2009.16(A), the results of the informal reconsideration shall be the final administrative decision and no right to an administrative appeal shall be available.

I. Complaint Survey Administrative Appeal. Pursuant to R.S. 40:2009.16, the outpatient abortion facility and the complainant have the right to request an administrative appeal on a complaint in which the department determines that the complaint concerns a patient in a facility and involves issues that have resulted or are likely to result in serious harm or death to a patient.

J. Sanctions. The department may impose sanctions as a result of deficiencies cited following any survey. A sanction may include, but is not limited to:

1. civil fine(s);
2. a plan of correction;
3. revocation of license;
4. denial of license renewal application;
5. immediate suspension of license; and
6. any and all sanctions allowed under federal or state law or regulation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

**§4409. Changes in Outpatient Abortion Facility Information or Key Administrative Personnel**

A. An outpatient abortion facility license shall be valid for the person or entity named as the outpatient abortion facility and for the physical address provided by the applicant on the initial licensing application or by the outpatient abortion facility in the licensing renewal application submitted to the department.

B. Change of Information. Any change regarding the outpatient abortion facility's entity name, "doing business as" name, mailing address, telephone number, or any combination thereof, shall be reported in writing to the department within five calendar days of the change. Any change regarding the entity name or "doing business as" name requires a change to the outpatient abortion facility license and shall require a \$25 fee for the issuance of an amended license.

C. Change of Key Administrative Personnel. Any change regarding the outpatient abortion facility's key administrative personnel shall be reported in writing to the department within five calendar days of the change. For the purposes of this Chapter, key administrative personnel includes the administrator and medical director, and the outpatient abortion facility shall provide the individual's name, hire date, and qualifications as defined in this Chapter.

D. Change of Ownership. A change of ownership (CHOW) of an outpatient abortion facility shall be reported in writing to the department at least five calendar days prior to the change. Within five calendar days following the change, the new owner shall submit to HSS all legal documents relating to the CHOW, an initial licensing application packet, and the non-refundable initial licensing fee. Once all required documentation and information is submitted and complete, HSS will review. If the CHOW is approved, the department shall issue a new license in the name of the new owner.

1. If the department has issued a notice of license revocation or a notice of immediate suspension at the time the CHOW is submitted, the department shall deny the CHOW.

E. Change of Physical Address. An outpatient abortion facility that intends to change the physical address is required to obtain plan review approval from the OSFM in accordance with the provisions of this Chapter.

1. Because the license of an outpatient abortion facility is not transferrable or assignable, any proposed change in the physical address requires the outpatient abortion facility to submit a newly completed initial licensing application packet and a new non-refundable initial licensing fee. In addition, the outpatient abortion facility must submit a written notice of intent to relocate to the HSS at the time the plan review request is submitted to the OSFM for approval.

2. The department shall conduct an announced on-site survey at the proposed new location prior to relocation of the facility.

3. Any change regarding the outpatient abortion facility's physical address shall result in a new anniversary date for the license issued.

F. Duplicate License. Any request for a duplicate license shall be accompanied by a \$25 fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

#### **§4411. License Renewal Application Process**

A. License Renewal Application Packet. A license renewal application packet for an outpatient abortion facility shall be obtained from the department. A complete license

renewal application packet shall be submitted to the department at least 30 calendar days prior to the expiration of the current license.

B. To be considered complete, the license renewal application packet shall include the following:

1. a completed outpatient abortion facility license renewal application and the non-refundable license renewal fee;

2. a copy of the most current on-site inspection report with approval for occupancy from the OSFM;

3. a copy of the most current health inspection report with approval for occupancy from the OPH; and

4. any other documentation required by the department for licensure.

C. If the license renewal application packet is incomplete as submitted, the outpatient abortion facility shall be notified in writing of the missing information, and shall have 10 calendar days from receipt of the notification to submit the additional requested information. If the additional requested information is not received prior to the expiration of the current license, it will result in the voluntary non-renewal of the outpatient abortion facility license.

D. Annual Licensing Survey. Upon receipt of a complete license renewal application packet, the department may conduct an on-site annual licensing survey. This annual licensing survey shall be unannounced.

1. If it is determined that the outpatient abortion facility is not in compliance with all applicable federal, state, and local statutes, laws, rules, regulations, and ordinances, including department rules, regulations, and fees, governing or relating to outpatient abortion facilities, abortion or termination procedures, reporting requirements, ultrasound requirements, informed consent requirements or any other matter related to abortion or abortion procedures, and that a potential threat to the health, safety, and welfare of the patients is presented, the department shall deny the license renewal application.

2. If it is determined that the outpatient abortion facility is in compliance with all applicable federal, state, and local statutes, laws, rules, regulations, and ordinances, including department rules, regulations, and fees, governing or relating to outpatient abortion facilities, abortion or termination procedures, reporting requirements, ultrasound requirements, informed consent requirements or any other matter related to abortion or abortion procedures, the department shall issue a full renewal license to the outpatient abortion facility.

E. Full Renewal License. The full renewal license issued by the department shall be valid until the expiration date shown on the license, unless the license is modified, revoked, or suspended.

1. If it is determined that the outpatient abortion facility is not in compliance with all applicable federal, state, and local statutes, laws, rules, regulations, and ordinances, including department rules, regulations, and fees, governing or relating to outpatient abortion facilities, abortion or termination procedures, reporting requirements, ultrasound requirements, informed consent requirements or any other matter related to abortion or abortion procedures, but the department, in its sole discretion, determines that the noncompliance does not present a threat to the health, safety,

and welfare of the patients, the department may issue a provisional renewal license.

F. Provisional Renewal License. The provisional renewal license issued by the department shall be valid for a period not to exceed six months.

1. At the discretion of the department, the provisional renewal license may be extended for an additional period not to exceed 90 calendar days in order for the outpatient abortion facility to correct the deficiencies cited following any survey.

2. When a provisional renewal license is issued by the department, the outpatient abortion facility shall submit a plan of correction to the department for approval and also shall be required to correct all deficiencies prior to the expiration of the provisional renewal license.

3. Upon receipt of the outpatient abortion facility's plan of correction, the department shall conduct an unannounced follow-up survey, either on-site or by desk review, to ensure the outpatient abortion facility is in compliance with all applicable federal, state, and local statutes, laws, rules, regulations, and ordinances, including department rules, regulations, and fees, governing or relating to outpatient abortion facilities, abortion or termination procedures, reporting requirements, ultrasound requirements, informed consent requirements or any other matter related to abortion or abortion procedures.

a. Following the follow-up survey, if it is determined that the outpatient abortion facility has corrected all deficiencies and has maintained compliance during the period of the provisional license, the department may issue a full renewal license for the remainder of the year until the anniversary date of the issuance of the outpatient abortion facility license.

b. Following the follow-up survey, if it is determined that the outpatient abortion facility has failed to correct all deficiencies or has not maintained compliance during the period of the provisional renewal license, or if new deficiencies are cited during the follow-up survey that present a threat to the health, safety, and welfare of a patient, the provisional renewal license shall expire unless otherwise determined by the department. The outpatient abortion facility shall submit a newly completed initial licensing application packet and a new non-refundable initial licensing fee to begin the initial licensing application process again, subject to any facility need review approval.

G. The issuance of a full renewal license does not in any manner affect any previously existing sanction by the department against the outpatient abortion facility including, but not limited to, a civil fine(s), plan of correction, revocation of license, or immediate suspension of license.

H. If the department has issued a notice of license revocation or notice of immediate suspension of license at the time the license renewal application packet is submitted, the department shall deny the license renewal application.

I. Informal Reconsideration and Administrative Appeal. The outpatient abortion facility does not have the right to request an informal reconsideration and/or an administrative appeal of the issuance of a provisional renewal license. An outpatient abortion facility that has been issued a provisional renewal license is considered licensed and operational for

the term of the initial renewal provisional license. The issuance of a provisional renewal license is not considered to be a denial of an initial licensing application, denial of a license renewal application, or license revocation for the purposes of this Chapter.

J. Informal Reconsideration. An outpatient abortion facility that has been issued a provisional renewal license has the right to request an informal reconsideration regarding the validity of the deficiencies cited during the follow-up survey.

1. The request for an informal reconsideration must be in writing and received by HSS within five days of receipt of the statement of deficiencies. If a timely request for an informal reconsideration is received, HSS shall schedule the informal reconsideration and notify the outpatient abortion facility in writing.

2. The request for an informal reconsideration must identify each disputed deficiency or deficiencies and the reason for the dispute and include any documentation that demonstrates that the determination was made in error.

3. Correction of a deficiency or deficiencies cited in a follow-up survey shall not be the basis for an informal reconsideration.

K. Administrative Appeal. An outpatient abortion facility that has been issued a provisional renewal license has the right to request an administrative appeal regarding the validity of the deficiencies cited during the follow-up survey.

1. The request for an administrative appeal must be in writing and received by the DAL, or its successor, within 15 days of receipt of the statement of deficiencies.

2. The request for an administrative appeal must identify each disputed deficiency or deficiencies and the reason for the dispute and include any documentation that demonstrates that the determination was made in error.

3. Correction of a deficiency or deficiencies cited in a follow-up survey shall not be the basis for an administrative appeal.

4. Upon expiration of the provisional renewal license, the outpatient abortion facility shall immediately cease and desist providing abortion services unless the DAL, or its successor, issues a stay of the expiration.

5. Stay of the Expiration. The request for a stay of the expiration must be submitted with the request for an administrative appeal and received by the DAL, or its successor, within 15 days of receipt of the statement of deficiencies.

a. Following a contradictory hearing and only upon a showing that there is no potential harm to the patients being served by the outpatient abortion facility, the stay may be granted by the DAL, or its successor.

6. If a timely request for an administrative appeal is received, the DAL, or its successor, shall conduct the administrative appeal within 90 calendar days of the docketing of the administrative appeal. For good cause shown, the DAL, or its successor, may grant one extension, not to exceed 90 calendar days.

a. If the final decision of the DAL, or its successor, is to remove all deficiencies, the outpatient abortion facility's license will be granted/re-instated upon the payment of any licensing fees, outstanding sanctions, or other fees due to the department.

b. If the final decision of the DAL, or its successor, is to remove some but not all deficiencies, the department shall have the discretion to determine the operational status of the outpatient abortion facility.

c. If the final decision of the DAL, or its successor, is to uphold the deficiencies and affirm the expiration of the provisional renewal license, the outpatient abortion facility shall:

i. immediately cease and desist providing abortion services as an outpatient abortion facility;

ii. return the outpatient abortion facility license to the department; and

iii. notify the department in writing of the secure and confidential location where the patient medical records will be stored, including the name, physical address, and contact person, within 10 days of the rendering of the administrative appeal judgment.

#### L. Voluntary Non-Renewal of License

1. If an outpatient abortion facility fails to timely renew its license, the license shall expire on its face and is considered to be a voluntary non-renewal of license. At such time, the outpatient abortion facility shall immediately cease and desist providing abortions as an outpatient abortion facility.

2. Notice of Voluntary Non-Renewal of License. The outpatient abortion facility must provide advanced written notice of its voluntary non-renewal of license at least 30 calendar days prior to the date of the expiration of the outpatient abortion facility license. The notice of voluntary non-renewal of the license must be provided to all of the outpatient abortion facility's staff, including the medical director, to any patient having an abortion procedure within the last 30 calendar days of operation, and to HSS.

3. In addition, the outpatient abortion facility shall notify HSS in writing of the secure and confidential location where the patient medical records will be stored, including the name, physical address, and contact person.

4. As this is a voluntary action on the part of the outpatient abortion facility, no informal reconsideration or administrative appeal rights shall be available.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

#### **§4413. Cessation of Business**

A. Outpatient Abortion Facility Duties and Responsibilities. An outpatient abortion facility that intends to close or cease operations shall comply with the procedures of this Chapter.

1. Notice of Cessation of Business. The outpatient abortion facility must provide advanced written notice of its cessation of business at least 30 calendar days prior to the date it intends to cease business operations. The notice of cessation of business must be provided to all the outpatient abortion facility's staff, including the medical director, to any patient having an abortion procedure within the last 30 days of operation, and to HSS.

2. In addition, the outpatient abortion facility must notify HSS in writing of the secure and confidential location where the patient medical records will be stored, including the name, physical address, and contact person.

B. If an outpatient abortion facility fails to follow the procedures of this Chapter, any owner, officer, member, manager, director, or administrator of the outpatient abortion facility may be prohibited from owning, managing, directing, or operating another outpatient abortion facility in the state of Louisiana for two years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

#### **§4415. Denial of an Initial License, Denial of License Renewal Application, and License Revocation**

##### A. Denial of an Initial License

1. The department shall deny an initial license in the event that the initial licensing survey finds that the outpatient abortion facility is not in compliance with all applicable federal, state, and local statutes, laws, rules, regulations, and ordinances, including department rules, regulations, and fees, governing or relating to outpatient abortion facilities, abortion or termination procedures, reporting requirements, ultrasound requirements, informed consent requirements or any other matter related to abortion or abortion procedures, and a potential threat to the health, safety, and welfare of the patients is presented.

2. The department shall deny an initial license for any of the reasons a license may be revoked or non-renewed pursuant to the provisions of this Chapter.

B. Denial of License Renewal Application and License Revocation. The department may deny a license renewal application or revoke a license for any of the following reasons:

1. failure to be in substantial compliance with all applicable federal, state, and local statutes, laws, rules, regulations, and ordinances, including department rules, regulations, and fees, governing or relating to outpatient abortion facilities, abortion or termination procedures, reporting requirements, ultrasound requirements, informed consent requirements or any other matter related to abortion or abortion procedures;

2. failure to comply with the terms and provisions of an education letter or settlement agreement;

3. failure to protect a patient from any act posing a threat to a patient's health and safety while on the licensed premises receiving services provided by the outpatient abortion facility;

4. knowingly providing false, forged, or altered statements or information on any documentation required to be submitted to the department or required to be maintained by the outpatient abortion facility, including, but not limited to:

a. the initial licensing application packet or the license renewal application packet;

b. data forms;

c. patient medical records or outpatient abortion facility records; or

d. matters under investigation by the department, the Office of the Attorney General, or law enforcement agencies;

5. knowingly making a false statement or providing false, forged, or altered information or documentation to DHH employees or to law enforcement agencies;

6. employing false, fraudulent, or misleading advertising practices;

7. an owner, officer, member, manager, administrator, director, managing employee, or person designated to manage or supervise patient care has either pled guilty or nolo contendere to a felony, or has been convicted of a felony, as documented by a certified copy of the record of the adjudicating court:

a. for purposes of these provisions, conviction of a felony means a felony relating to any of the following:

- i. the violence, abuse, or neglect of a patient;
- ii. cruelty, exploitation, or the sexual battery of a juvenile or the infirmed;
- iii. a drug offense;
- iv. crimes of a sexual nature;
- v. possession, use of a firearm or deadly weapon;

or

vi. fraud or misappropriation of federal or state funds;

8. failure to comply with all reporting requirements in a timely manner, as required by all applicable federal, state, and local statutes, laws, rules, regulations, and ordinances, including department rules, regulations, and fees, governing or relating to outpatient abortion facilities, abortion or termination procedures, reporting requirements, ultrasound requirements, informed consent requirements or any other matter related to abortion or abortion procedures;

9. failure to allow the department surveyors access to any and all requested documents and information on the licensed premises, including, but not limited to, patient medical records and outpatient abortion facility records;

10. failure to allow the department surveyors access to interview any staff or other persons as necessary or required;

11. interfering or impeding with the survey process;

12. bribery, harassment, intimidation, or solicitation of any patient, by or on behalf of the outpatient abortion facility, designed to cause that patient to use or retain the services of the outpatient abortion facility;

13. failure to follow the cessation of business procedures as provided in this Chapter; or

14. failure to timely pay any licensing fees, outstanding sanctions, or other fees due to the department. For the purposes of this Chapter, any payments returned for insufficient funds are considered failure to timely pay.

C. Notice. The secretary shall provide 30 calendar days written notice of the denial of initial license, notice of denial of license renewal application, and notice of license revocation.

D. Informal Reconsideration. The applicant and/or outpatient abortion facility has the right to request an informal reconsideration of a decision by the department to deny an initial license, to deny a license renewal application, or to issue a revocation action of a license to operate an outpatient abortion facility. This informal reconsideration is limited to the reconsideration of the deficiencies or findings which make the basis for the license denial or revocation action and the results of this reconsideration are forwarded to the secretary for review and decision regarding the denial or revocation action. The applicant and/or outpatient

abortion facility will receive written notice of the final results and decision. However, there is no right to request an informal reconsideration of a voluntary non-renewal of license as provided in this Chapter.

1. The request for an informal reconsideration must be in writing and received by HSS within 15 calendar days of receipt of the notice of the denial of initial license, notice of denial of license renewal application, or notice of license revocation.

2. The request for an informal reconsideration shall include any documentation that demonstrates that the determination was made in error.

3. If a timely request for an informal reconsideration is received, HSS shall schedule the informal reconsideration and notify the applicant and/or outpatient abortion facility in writing.

4. The applicant and/or outpatient abortion facility shall have the right to appear in person at the informal reconsideration and may be represented by counsel.

5. Correction of a deficiency or deficiencies that is the basis for the denial of initial license, denial of license renewal application, or license revocation shall not be a basis for an informal reconsideration.

6. The informal reconsideration process is not in lieu of the administrative appeals process.

7. The applicant and/or outpatient abortion facility shall receive written notice of the results of the informal reconsideration.

E. Administrative Appeals. The applicant and/or outpatient abortion facility has the right to request a suspensive administrative appeal of the secretary's decision to deny an initial license, deny a license renewal application, or to revoke a license to operate an outpatient abortion facility. There is no right to request a suspensive administrative appeal of a voluntary non-renewal of license as provided in this Chapter.

1. The request for a suspensive administrative appeal must be in writing and received by the Office of the Secretary within 30 calendar days of receipt of the notice of the results of the informal reconsideration. A copy of the request for a suspensive administrative appeal shall be submitted to the DAL, or its successor.

a. Administrative Appeal Only. The applicant and/or outpatient abortion facility may forego its right to an informal reconsideration and proceed directly to a suspensive administrative appeal. In such a case, the request for a suspensive administrative appeal must be in writing and received by the Office of the Secretary within 30 calendar days of receipt of the notice of denial of initial licensing application, notice of denial of license renewal application, or notice of license revocation. The provisions of this Chapter shall otherwise govern this suspensive administrative appeal.

2. If a timely request for a suspensive administrative appeal is received, the Office of the Secretary shall forward the applicant and/or outpatient abortion facility's request and any accompanying documentation, to the DAL, or its successor, to be docketed, and send a copy of such request to the applicant or outpatient abortion facility either by U.S. mail, facsimile, or email.

3. The request for a suspensive administrative appeal shall state the basis and specific reasons for the appeal, and include any documentation that demonstrates that the determination was made in error.

4. If a timely request for a suspensive administrative appeal is received by the Office of the Secretary, the denial of license renewal application or license revocation shall be suspensive, and the outpatient abortion facility shall be allowed to continue to operate and provide abortions services until such time as the DAL, or its successor, issues a final administrative decision.

a. If the secretary determines that the deficiencies cited during any survey pose an imminent or immediate threat to the health, welfare, and safety of a patient, the denial of the license renewal application or license revocation may be immediate and may be enforced during the pendency of the administrative appeal. If the secretary makes such a determination, the outpatient abortion facility will be notified in writing.

5. Correction of a deficiency or deficiencies that is the basis for the denial of the initial license, denial of the license renewal application, or license revocation shall not be a basis for a suspensive administrative appeal.

6. If the final decision of the DAL, or its successor, is to reverse the denial of an initial license, the applicant's license will be granted upon the payment of any licensing fees, outstanding sanctions, or other fees due to the department. If the final decision of the DAL, or its successor, is to reverse the denial of a license renewal application or license revocation, the license will be reinstated upon the payment of any licensing fees, outstanding sanctions, or other fees due to the department.

7. If the final decision of the DAL, or its successor, is to affirm the denial of a license renewal application or license revocation, the outpatient abortion facility shall:

a. immediately cease and desist providing abortion services as an outpatient abortion facility;

b. provide written notice to all of the outpatient abortion facility's staff, including the medical director, and to any patient having an abortion procedure within the last 30 calendar days of operation;

c. return the outpatient abortion facility license to the department; and

d. notify the department in writing of the secure and confidential location where the patient medical records will be stored, including the name, physical address, and contact person, within 10 days of the rendering of the administrative appeal judgment.

F. Prohibition Following Loss of License. If a license is revoked or license renewal application is denied other than for cessation of business or non-operational status, or if the license is surrendered in lieu of an adverse action, any owner, officer, member, manager, director, or administrator of the outpatient abortion facility may be prohibited from owning, managing, directing, or operating another outpatient abortion facility in the state of Louisiana for two years.

G. If the department has issued a notice of license revocation or notice of immediate suspension of license at the time the license renewal application is submitted, the department shall deny the license renewal application. The

denial of the license renewal application does not affect, in any manner, the license revocation action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

#### **§4417. Immediate Suspension of License**

A. Pursuant to R.S. 2175.6, the secretary may issue an immediate suspension of a license if any investigation or survey determines that the applicant or outpatient abortion facility is in violation of any provision of R.S. 40:2175 et seq., in violation of the rules promulgated by the department, or in violation of any other federal or state law or regulation, and not in compliance with all applicable federal, state, and local statutes, laws, rules, regulations, and ordinances, including department rules, regulations, and fees, governing or relating to outpatient abortion facilities, abortion or termination procedures, reporting requirements, ultrasound requirements, informed consent requirements or any other matter related to abortion or abortion procedures, and the secretary determines that the violation or violations pose an imminent or immediate threat to the health, welfare, or safety of a client or patient.

B. Notice of Immediate Suspension of License. The secretary shall provide written notice of the immediate suspension of license.

C. Effective date. The suspension of the license is effective immediately upon the receipt of the written notice of immediate suspension of license.

D. Administrative Appeal. The outpatient abortion facility shall have the right to request a devolutive administrative appeal of the immediate suspension of license.

1. The request for a devolutive administrative appeal must be in writing and submitted to the DHH Office of the Secretary within 30 calendar days of receipt of the notice of immediate suspension of license.

2. The request for a devolutive administrative appeal shall specify in detail the reasons why the appeal is lodged.

E. Injunctive Relief. The outpatient abortion facility shall have the right to file for injunctive relief from the immediate suspension of license.

1. Venue. Any action for injunctive relief shall be filed with the district court for the parish of East Baton Rouge.

2. Burden of Proof. Before injunctive relief may be granted, the outpatient abortion facility shall prove by clear and convincing evidence that the secretary's decision to issue the immediate suspension of license was arbitrary and capricious.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

#### **Subchapter B. Administration and Organization**

##### **§4421. Governing Body**

A. The outpatient abortion facility shall have a governing body that assumes full responsibility for the total operation of the outpatient abortion facility.

1. The governing body shall consist of at least one individual who will assume full responsibility.

2. The outpatient abortion facility shall maintain documentation on the licensed premises identifying the following information for each member of the governing body:

- a. name;
- b. contact information;
- c. address; and
- d. terms of membership.

3. The governing body shall develop and adopt bylaws which address its duties and responsibilities.

4. The governing body shall, at minimum, meet annually and maintain minutes of such meetings documenting the discharge of its duties and responsibilities.

B. The governing body shall be responsible for:

1. ensuring the outpatient abortion facility's continued compliance with all applicable federal, state, and local statutes, laws, rules, regulations, and ordinances, including department rules, regulations, and fees, governing or relating to outpatient abortion facilities, abortion or termination procedures, reporting requirements, ultrasound requirements, informed consent requirements or any other matter related to abortion or abortion procedures;

2. designating a person to act as the administrator and delegating sufficient authority to this person to manage the day-to-day operations of the facility;

3. designating a person to act as the medical director and delegating authority to this person to allow him/her to direct the medical staff, nursing personnel, and medical services provided to each patient;

4. evaluating the administrator and medical director's performance annually, and maintaining documentation of such in their respective personnel files;

5. ensuring that upon hire and prior to providing care to patients and, at a minimum, annually, each employee is provided with orientation, training, and evaluation for competency according to their respective job descriptions;

6. developing, implementing, enforcing, monitoring, and annually reviewing in collaboration with the administrator, medical director, and registered nurse, written policies and procedures governing the following:

- a. the scope of medical services offered;
- b. personnel practices, including, but not limited to:
  - i. developing job descriptions for licensed and non-licensed personnel consistent with the applicable scope of practice as defined by federal and state law;
  - ii. developing a program for orientation, training, and evaluation for competency; and
  - iii. developing a program for health screening;
- c. the management of medical emergencies and the immediate transfer to a hospital of patients requiring emergency medical care beyond the capabilities of the outpatient abortion facility which shall identify emergency medical equipment and medications that will be used to provide for basic life support until emergency medical services arrive and assume care; and

d. disaster plans for both internal and external occurrences;

7. approving all bylaws, rules, policies, and procedures formulated in accordance with all applicable state laws, rules, and regulations;

8. ensuring all bylaws, rules, policies, and procedures formulated in accordance with all applicable state laws, rules, and regulations are maintained on the licensed premises and readily accessible to all staff;

9. maintaining organization and administration of the outpatient abortion facility;

10. acting upon recommendations from the medical director relative to appointments of persons to the medical staff;

11. ensuring that the outpatient abortion facility is equipped and staffed to meet the needs of its patients;

12. ensuring services that are provided through a contract with an outside source are provided in a safe and effective manner;

13. ensuring that the outpatient abortion facility develops, implements, monitors, enforces, and reviews at a minimum, quarterly, a quality assurance and performance improvement (QAPI) program;

14. developing, implementing, monitoring, enforcing, and reviewing annually written policies and procedures relating to communication with the administrator, medical director, and medical staff to address problems, including, but not limited to, patient care, cost containment, and improved practices;

15. ensuring that the outpatient abortion facility conducts annual drills in accordance with the disaster plan and documents same;

16. ensuring that the outpatient abortion facility procures emergency medical equipment and medications that will be used to provide for basic life support until emergency medical services arrive and assume care; and

17. ensuring that the outpatient abortion facility orders and maintains a supply of emergency drugs for stabilizing and/or treating medical and surgical complications for intra-operative and post-operative care on the licensed premises, subject to the approval by the medical director.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

#### **§423. Staffing Requirements, Qualifications, and Responsibilities**

A. General Provisions. An outpatient abortion facility shall have enough qualified personnel as indicated under this Chapter who are available to provide direct patient care as needed by all patients and administrative and nonclinical services needed to maintain the operation of the outpatient abortion facility in accordance with the provisions of this Chapter.

B. Administrator. The outpatient abortion facility shall have an administrator designated by the governing body who is responsible for the day-to-day management, supervision, and operation of the outpatient abortion facility. The administrator shall be an on-site employee who shall be employed on a full-time basis.

1. Qualifications. The administrator shall be at least 18 years of age and possess a high school diploma or equivalent.

2. The outpatient abortion facility shall designate a person to act in the administrator's absence, and shall ensure this person meets the qualifications of the administrator

pursuant to this Chapter. The outpatient abortion facility shall maintain documentation on the licensed premises identifying this person and evidence of their qualifications.

3. Duties and Responsibilities. The administrator shall be responsible for:

a. employing licensed and non-licensed qualified personnel to provide the medical and clinical care services to meet the needs of the patients being served;

b. ensuring that upon hire and prior to providing care to patients, each employee is provided with orientation, training, and evaluation for competency as provided in this Chapter;

c. ensuring that written policies and procedures for the management of medical emergencies and the immediate transfer to a hospital of patients requiring emergency medical care beyond the capabilities of the outpatient abortion facility are developed, implemented, monitored, enforced, and annually reviewed, and readily accessible to all staff;

d. ensuring that emergency medical equipment and medications that will be used to provide for basic life support until emergency medical services arrive and assume care are maintained in proper working order and are available for use on a day-to-day basis on the licensed premises;

e. ensuring that a licensed physician who has admitting privileges or has a written transfer agreement with another physician(s) who has admitting privileges at a local hospital within the same town or city to facilitate emergency care is on the licensed premises when a patient is scheduled to undergo an abortion procedure;

f. ensuring that disaster plans for both internal and external occurrences are developed, implemented, monitored, enforced, and annually reviewed and that annual drills are held in accordance with the disaster plan. The outpatient abortion facility shall maintain documentation on the licensed premises indicating the date, type of drill, participants, and materials;

g. ensuring that a licensed medical professional trained in CPR and trained in the use of emergency equipment is on the licensed premises at all times when abortion procedures are being performed;

h. ensuring that patient medical records are completely and accurately documented consistent with the provisions of this Chapter within 30 days from the abortion procedure; and

i. maintaining current credentialing and/or personnel files on each employee that shall include documentation of the following:

i. a completed employment application;

ii. job description;

iii. a copy of current health screening reports conducted in accordance with the outpatient abortion facility policies and procedures and in compliance with all applicable federal, state, and local statutes, laws, rules, regulations, and ordinances, including department rules, regulations, and fees, governing or relating to outpatient abortion facilities, abortion or termination procedures, reporting requirements, ultrasound requirements, informed consent requirements or any other matter related to abortion or abortion procedures;

iv. documentation that each employee has successfully completed orientation, training, and evaluation for competency related to each job skill as delineated in their respective job description;

v. documentation that all licensed nurses have successfully completed a basic life support course; and

vi. other pertinent information as required by the outpatient abortion facility's policies and procedures.

4. All credentialing and/or personnel files shall be current and maintained on the licensed premises at all times.

C. Medical Staff. The outpatient abortion facility shall provide medical and clinical services. The outpatient abortion facility shall employ qualified medical staff to meet the needs of the patients.

1. Qualifications. A medical staff member shall be a physician, as defined in this Chapter, who has completed, at a minimum, a residency rotation in obstetrics/gynecology.

2. Medical Director. The outpatient abortion facility shall have a medical director designated and approved by and accountable to the governing body who is responsible for all medical care provided to patients in the facility, and for the ethical and professional practices of the medical staff.

a. When an outpatient abortion facility has only one medical staff member, that individual shall serve as medical director.

b. The outpatient abortion facility shall designate a physician, as defined in this Chapter, to act in the medical director's absence. The outpatient abortion facility shall maintain documentation on the licensed premises identifying this physician and evidence of his/her qualifications.

c. Duties and Responsibilities. The medical director shall be responsible for:

i. developing, implementing, enforcing, monitoring, and annually reviewing written policies and procedures governing the medical and clinical services at the outpatient abortion facility, including, but not limited to:

(a). pre-operative procedures, intraoperative procedures, post-operative care and procedures, discharge, and follow-up care;

(b). laboratory services;

(c). infection control;

(d). pharmaceutical services, including, but not limited to, identifying the drugs dispensed and/or administered to patients on the licensed premises;

(e). anesthesia services;

(f). emergency medical services, including, but not limited to:

(i). identifying emergency medical equipment and medications that will be used to provide for basic life support until emergency medical services arrive and assume care; and

(ii). identifying and ensuring that a supply of emergency drugs for stabilizing and/or treating medical and surgical complications are maintained on the licensed premises;

(g). patient medical records and reporting requirements;

(h). the examination of fetal tissue;

(i). the disposition of medical waste;

(j). physical environment; and

(k). quality assurance and performance improvement (QAPI) program;

ii. developing, implementing, enforcing, monitoring, annually reviewing written bylaws, rules, policies, and procedures for self-governing of the professional activity of all medical staff members including, but not be limited to:

(a). the structure of the medical staff;

(b). review of the credentials, and training, and competency of each medical staff member to perform medical and clinical services, at least every two years, and to delineate and to recommend approval for individual privileges;

(i). when an outpatient abortion facility employs one physician, the review shall be conducted by a peer physician, at least every two years, according to the provisions of this Section;

(ii). the recommendation shall be in writing and maintained on the licensed premises in the credentialing file;

(iii). verification that each member of the medical staff is a doctor who possesses a current license to practice medicine in Louisiana, is in good standing with the Louisiana State Board of Medical Examiners, and whose license does not restrict the doctor from performing the services at the outpatient abortion facility;

(iv). evaluation for competency and past performance of each medical staff member, at a minimum, annually, which shall include monitoring and evaluation of patient care provided;

(v). medical staff discipline; and

(vi). grievance process;

iii. monitoring and reviewing, at a minimum, quarterly, in collaboration with the QAPI team/committee, the medical and clinical services provided by the outpatient abortion facility to ensure acceptable levels of quality of care and services;

iv. reviewing reports of all accidents or unusual incidents occurring on the licensed premises and reporting to the administrator potential health and safety hazards;

v. ensuring that each patient receiving medical and clinical services is under the professional care of a member of the medical staff who shall assess, supervise, and evaluate the care of the patient;

vi. ensuring that a member of the medical staff remains on the licensed premises until each patient is assessed to be awake, alert, and medically stable prior to discharge; and

vii. ensuring that a member of the medical staff shall be either present or immediately available by telecommunications to the staff when there is a patient on the licensed premises.

D. Nursing Staff. The outpatient abortion facility shall provide nursing services. The outpatient abortion facility shall employ qualified nursing staff to meet the needs of the patients.

1. Registered Nurse. The outpatient abortion facility shall have a registered nurse (RN) who is responsible for the overall direction of all nursing staff and nursing services provided.

a. Qualifications. The RN shall:

i. have a current, unrestricted Louisiana registered nurse license; and

ii. be in good standing with the Louisiana State Board of Nursing.

2. Duties and Responsibilities. The RN shall be responsible for:

a. developing, implementing, enforcing, monitoring, and annually reviewing written policies and procedures governing the following:

i. personnel, including, but not limited to:

(a). developing a job description that delineates responsibilities and duties for each category of licensed and non-licensed nursing staff consistent with acceptable nursing standards of practice;

(b). orientation;

(c). training; and

(d). evaluation for competency;

ii. nursing care and services consistent with accepted nursing standards of practice;

b. assigning duties and functions to each licensed and non-licensed employee commensurate with his/her licensure, certification, experience, and competence consistent with acceptable nursing standards of practice;

c. verifying that each licensed nurse possesses a current and unrestricted license to practice nursing in Louisiana and is in good standing with the Louisiana State Board of Nursing;

d. ensuring that the number of nursing staff on duty is sufficient to meet the needs of the patient(s);

e. ensuring that at least one licensed nurse is present when there is a patient receiving or recovering from an abortion procedure on the licensed premises;

f. ensuring that each licensed nurse working at the outpatient abortion facility has successfully completed a basic life support course; and

g. developing, implementing, enforcing, monitoring, and reviewing annually in collaboration with the medical director, written policies and procedures establishing a formalized program of in-service training and evaluation for competency for each category of licensed and non-licensed nursing staff and for all nursing care and services provided at the outpatient abortion facility.

i. The RN shall ensure that the training is related to each job skill as delineated in their respective job description.

ii. The RN shall ensure an evaluation for competency is performed for each category of licensed and non-licensed nursing staff and for all nursing care and services provided.

iii. The RN shall maintain documentation in the personnel file of each nursing staff member evidencing the content of the training that was provided, including the name of the teacher, date, nurse's name, and documents provided.

iv. The RN shall maintain documentation in the personnel file of each nursing staff member evidencing that an evaluation for competency was conducted, including the name of the evaluator, date, nurse's name, and a notation that the nurse is competent in each job skill as delineated in their respective job description.

E. Orientation and Training. The administrator shall develop, implement, enforce, monitor, and annually review, in collaboration with the medical director and registered nurse, written policies and procedures regarding orientation and training of all employees.

1. Orientation. Upon hire and prior to providing care to patients, all employees shall be provided orientation related to the outpatient abortion facility's written policies and procedures governing the following:

- a. organizational structure;
- b. confidentiality;
- c. grievance process;
- d. disaster plan for internal and external occurrences;
- e. emergency medical services;
- f. program philosophy;
- g. personnel practices;
- h. reporting requirements; and
- i. basic skills required to meet the health needs and problems of the patients.

2. Training. Upon hire, and at a minimum, annually, all employees shall be provided training in each job skill as delineated in their respective job description.

a. Medical training of a licensed medical professional shall only be provided by a medical professional with an equivalent or higher license.

b. Training of a non-licensed employee related to the performance of job skills related to medical and clinical services shall only be provided by a licensed medical professional consistent with the applicable standards of practice.

c. All training programs and materials used shall be available for review by HSS.

d. The administrator shall maintain documentation of all of the training provided in each employee's personnel files.

F. Evaluation for Competency. Upon hire, and at a minimum, annually, the outpatient abortion facility shall conduct an evaluation for competency of all employees related to each job skill as delineated in their respective job description.

1. The evaluation for competency shall include the observation of job skills and return demonstration by the employee.

2. Evaluation for competency of a licensed medical professional shall only be provided by a medical professional with an equivalent or higher license.

3. Evaluation for competency of a non-licensed employee related to the performance of job skills related to medical and clinical services shall only be provided by a licensed medical professional consistent with the applicable scope of practice.

4. The administrator shall maintain documentation of all evaluations for competencies in each employee's personnel file.

G. Health Screening. The outpatient abortion facility shall develop, implement, enforce, monitor, and annually review written policies and procedures governing health screening of personnel in accordance with all applicable federal, state, and local statutes, laws, ordinances, and department rules and regulations. The administrator shall

maintain documentation of health screening reports in each employee's personnel file.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

#### **§4425. Patient Medical Records and Reporting Requirements**

##### **A. General Provisions**

1. The outpatient abortion facility shall establish and maintain a patient medical record on each patient.

2. The patient medical record shall be:

- a. completely and accurately documented; and
- b. readily available and systematically organized to facilitate the compilation and retrieval of information.

3. The outpatient abortion facility shall ensure the confidentiality of patient medical records, including information in a computerized medical record system, in accordance with the Health Insurance Portability and Accountability Act (HIPAA) regulations.

4. Safeguards shall be established to protect the patient medical records from loss or damage.

B. Retention of Patient Medical Records. Patient medical records shall be retained by the outpatient abortion facility for a period of not less than seven years from the date of discharge. If the woman is a minor, then the medical record of the minor shall be kept for at least seven years or for five years after the minor reaches the age of majority, whichever is greater. Patient medical records shall be maintained on the premises for at least one year and shall not be removed except under court orders or subpoenas. Any patient medical record maintained off-site after the first year shall be provided to the department for review no later than 24 hours from the time of the department's request.

##### **C. Contents of Patient Medical Record**

1. The following minimum data shall be kept on all patients:

- a. identification data;
- b. date of procedure;
- c. medical and social history;
- d. anesthesia and surgical history;
- e. physical examination notes;
- f. chief complaint or diagnosis;
- g. clinical laboratory reports;
- h. pathology reports;
- i. individualized physician's orders;
- j. radiological/ultrasound reports;
- k. consultation reports (when appropriate);
- l. medical and surgical treatment;
- m. progress notes, discharge notes, and discharge summary;
- n. nurses' notes, including, but not limited to, all pertinent observations, treatments, and medications dispensed and/or administered;
- o. medication administration records, including, but not limited to, the date, time, medication, dose, and route;
- p. patient medical records shall contain documentation of any and all prescription drugs dispensed to each patient, including, but not limited to the:
  - i. full name of the patient;
  - ii. name of the prescribing physician;

- iii. name and strength of the drug;
- iv. quantity dispensed; and
- v. date of issue;
- q. signed and dated authorizations, consents, releases, or notices required by all applicable federal, state, and local statutes, laws, ordinances, and department rules and regulations;
- r. operative report;
- s. anesthesia report, including, but not limited to, the date, time, type of anesthesia, dose, and route; and
- t. special procedures reports.

2. Each entry documented in the patient's medical record shall be signed by the physician as appropriate, i.e., attending physician, consulting physician, anesthesiologist, pathologist, etc. Nursing notes and observations shall be signed by the nurse. All entries shall be in writing and contain the date, time, and signature of the individual(s) delivering the patient care and services.

D. Nothing in this Section is intended to preclude the use of automated or centralized computer systems or any other techniques for the storing of medical records, provided the regulations stated herein are met.

E. Other Reports. The outpatient abortion facility shall maintain a daily patient roster of all patients receiving abortion services. This daily patient roster shall be retained for a period of three years.

F. Reporting Requirements

1. The outpatient abortion facility shall maintain documentation to support that the outpatient abortion facility is compliant with all reporting requirements, including, but not limited to, the induced termination of pregnancy (ITOP) form, and other documentation as required by federal, state, and local statutes, laws, ordinances, and department rules and regulations.

2. The outpatient abortion facility shall report in accordance with all applicable state laws for the reporting of crimes against a child that include but are not limited to:

- a. rape;
- b. sexual battery;
- c. incest; and
- d. carnal knowledge of a juvenile.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

**§4427. Quality Assurance and Performance Improvement Program (QAPI)**

A. The outpatient abortion facility shall develop, implement, enforce, maintain, and annually review a written QAPI program subject to approval by the governing body, which puts systems in place to effectively identify issues for which quality monitoring and performance improvement activities are necessary. The QAPI program shall include plans of action to correct identified issues including, but not limited to, monitoring the effect of implemented changes and making necessary revisions to the plan of action.

1. Plans of Action. The outpatient abortion facility shall develop and implement a QAPI plan of action designed to effectively identify issues for which quality monitoring and performance improvement activities are necessary.

2. The QAPI plan of action shall include the following:

- a. processes for receiving input regarding the quality of medical and clinical services received;
- b. patient medical records that are complete and current;
- c. processes for identifying on a quarterly basis the risk factors that affect or may affect the health and safety of the patients of the outpatient abortion facility receiving medical and clinical services. Examples include, but are not limited to:
  - i. review and resolution of patient grievances; and
  - ii. review and resolution of patient/employee incidents involving medication errors and equipment failure;
- d. a process to review and develop action plans to resolve all system wide issues identified as a result of the processes above.

3. The QAPI outcomes shall be documented and reported to the administrator in writing for action, as necessary, for any identified systemic problems.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

**Subchapter C. Pre-operative, Intra-operative, and Post-Operative Procedures**

**§4431. Screening and Pre-Operative Services**

A. Verification of Pregnancy. The presence of an intrauterine pregnancy shall be verified by one of the following:

- 1. urine or serum pregnancy test performed on-site;
- 2. detection of fetal heart tones; or
- 3. ultrasonography.

B. Gestational age shall be estimated by the following methods pre-operatively:

- 1. first date of last menstrual period, if known;
- 2. pelvic examination; or
- 3. ultrasonography.

C. Laboratory Tests

1. The laboratory tests listed below shall be performed at least 30 days prior to the abortion procedure:

- a. hematocrit or hemoglobin determination; and
- b. Rh factor status.

2. The results of the laboratory tests shall be documented in the patient's medical record at least 24 hours prior to the abortion procedure.

3. The physician performing the abortion shall document acknowledgement of the results of the laboratory tests in the patient's medical record prior to the abortion procedure.

D. Minors

1. No physician shall perform or induce an abortion upon any pregnant woman who is under the age of 18 years and who is not emancipated judicially or by marriage unless the physician has received the following documents:

- a. a notarized statement, pursuant to R.S. 40:1299.35.5, signed by the mother, father, legal guardian, or tutor of the minor declaring that the affiant has been informed that the minor intends to seek an abortion and that the affiant consents to the abortion; or

b. a court order pursuant to R.S. 40:1299.35.5; and  
c. a signed, dated, and timed document by the attending physician and/or licensed nurse, shall be obtained before the administration of any type of anesthesia which indicates if any person has or has not compelled the female child to undergo an abortion against her will.

2. All documentation related to consent and coercion shall be maintained in the medical record.

E. Ultrasound Requirements. Except in the case of a medical emergency, and in addition to the provisions of R.S. 40:1299.35.6, consent to an abortion of an unborn child at any stage of gestational development is voluntary and informed only if an obstetric ultrasound is performed in accordance with the provisions of this Section.

1. Qualifications to Perform Ultrasound. The ultrasound shall be performed by the physician who is to perform the abortion or a qualified person who is the physician's agent. For purposes of this Section, *qualified person* means a person having documented evidence that he or she has completed a course in the operation of ultrasound equipment and is in compliance with any other requirements of law regarding the operation of ultrasound equipment.

2. Requirements. At least 24 hours prior to the pregnant woman having any part of an abortion performed or induced, and prior to the administration of any anesthesia or medication in preparation for the abortion on the pregnant woman, the physician who is to perform the abortion or a qualified person who is the physician's agent shall comply with all of the following requirements:

a. perform an obstetric ultrasound on the pregnant woman, offer to simultaneously display the screen which depicts the active ultrasound images so that the pregnant woman may view them and make audible the fetal heartbeat, if present, in a quality consistent with current medical practice. Nothing in this Section shall be construed to prevent the pregnant woman from not listening to the sounds detected by the fetal heart monitor, or from not viewing the images displayed on the ultrasound screen;

b. provide a simultaneous and objectively accurate oral explanation of what the ultrasound is depicting, in a manner understandable to a layperson, which shall include the presence and location of the unborn child within the uterus and the number of unborn children depicted, the dimensions of the unborn child, and the presence of cardiac activity if present and viewable, along with the opportunity for the pregnant woman to ask questions;

c. offer the pregnant woman the option of requesting an ultrasound photograph or print of her unborn child of a quality consistent with current standard medical practice that accurately portrays, to the extent feasible, the body of the unborn child including limbs, if present and viewable;

d. from a form that shall be produced and made available by the department, staff will orally read the statement on the form to the pregnant woman in the ultrasound examination room prior to beginning the ultrasound examination, and obtain from the pregnant woman a copy of a completed, signed, and dated form;

e. retain copies of the election form and certification prescribed above. The certification shall be placed in the medical file of the woman and shall be kept by

the outpatient abortion facility for a period of not less than seven years. If the woman is a minor, the certification shall be placed in the medical file of the minor and kept for at least seven years or for five years after the minor reaches the age of majority, whichever is greater. The woman's medical files shall be kept confidential as provided by law.

3. Options to view or listen to required medical information shall be in accordance with the provisions of R.S. 40:1299.35.6.

a. A pregnant woman may choose not to exercise her option to request an ultrasound photograph print.

b. A pregnant woman may choose not to view the ultrasound images required to be provided to and reviewed with the pregnant woman.

c. A pregnant woman may choose not to listen to the sounds detected by the fetal heart monitor required to be provided to the pregnant woman.

F. Medical Emergencies. Upon a determination by a physician that a medical emergency, as defined pursuant to R.S. 40:1299.35.6 exists with respect to a pregnant woman, the outpatient abortion facility shall certify in writing the specific medical conditions that constitute the emergency. The certification shall be placed in the medical file of the woman.

G. Information and Informed Consent Pursuant to R.S. 40:1299.35.6

1. Oral and Written Information Provided by Physician or Referring Physician

a. At least 24 hours before the abortion the physician who is to perform the abortion or the referring physician shall provide informed consent to the pregnant woman seeking an abortion. The informed consent shall be communicated both orally and in person, and in writing, and shall be provided in a private room.

b. Documentation. The documentation of all such informed consent provided shall be maintained in the patient's medical record.

c. The informed consent shall also contain language explaining the following information to the pregnant woman seeking an abortion:

i. the option of reviewing and receiving an oral explanation of an obstetric ultrasound image of the unborn child;

ii. that the pregnant woman shall not be required to view or receive an explanation of the obstetric ultrasound images;

iii. that the pregnant woman shall not be penalized if she chooses not to view or receive an explanation of the obstetric ultrasound images;

iv. that the physician shall not be penalized if the pregnant woman chooses not to view or receive an explanation of the obstetric ultrasound images; and

v. inclusion in the patient's printed materials of a comprehensive list, compiled by the department, of facilities that offer obstetric ultrasounds free of charge.

2. Oral Information from a Physician or Qualified Person

a. When an initial contact is made by a person seeking to schedule an abortion for herself, a minor, or other adult woman, regardless of the means of contact, the physician who is to perform the abortion or any qualified

person acting on behalf of the physician shall inform the person of the internet address of the department's abortion alternatives and informed consent website.

### 3. Oral Information Provided by Physician, Referring Physician, or Qualified Person

a. At least 24 hours before a scheduled abortion the physician who is to perform the abortion, the referring physician, or a qualified person shall inform the pregnant woman seeking an abortion, orally and in-person that:

i. medical assistance may be available for prenatal care, childbirth, and neonatal care and that more detailed information on the availability of such assistance is contained on the department's website and printed materials;

ii. a pamphlet is available that describes the unborn child and contains a directory of agencies that offer an abortion alternative;

iii. the father of the unborn child is liable to assist in the support of the child, even if he has offered to pay for the abortion. In the case of rape this information may be omitted;

iv. the pregnant woman seeking an abortion is free to withhold or withdraw consent to the abortion at any time before or during the abortion without affecting her right to future care or treatment and without loss of any state or federally funded benefits to which she might otherwise be entitled.

### 4. Provision of Printed Materials

a. At least 24 hours before the abortion, the pregnant woman seeking an abortion shall be given a copy of the printed materials pursuant to R.S. 40:1299.35.6 by the physician who is to perform the abortion, the referring physician, or a qualified person.

b. If the pregnant woman seeking an abortion is unable to read the materials, the material shall be read to her.

c. If the pregnant woman seeking an abortion asks questions concerning any of the information or materials, answers shall be provided to her in her own language.

### 5. Certification and Reporting

a. Prior to the abortion, the outpatient abortion facility shall ensure the pregnant woman seeking an abortion has certified, in writing on a form provided by the department that the information and materials required were provided at least 24 hours prior to the abortion. This form shall be maintained in the woman's medical record.

b. Prior to performing the abortion, the physician who is to perform the abortion or his agent receives a copy of the written certification.

c. The pregnant woman seeking an abortion is not required to pay any amount for the abortion procedures until the 24 hour period has expired.

6. Medical Emergency. Where a medical emergency, as defined pursuant to R.S. 40:1299.35.6 compels the performance of an abortion, the physician shall orally inform the woman, before the abortion, if possible, of the medical indications supporting his judgment that an abortion is necessary to avert her death or to avert substantial and irreversible impairment of a major bodily function.

7. Reporting Requirements. Any physician who has provided the information and materials to any woman in

accordance with the requirements of this Section shall provide to the department:

a. with respect to a woman upon whom an abortion is performed, all information as required by R.S. 40:1299.35.10 as well as the date upon which the information and materials required to be provided under this Section were provided, as well as an executed copy of the certification form. This form shall be maintained in the woman's medical record;

b. with respect to any woman to whom the printed and oral information and materials have been provided pursuant to R.S. 40:1299.35.6, but upon whom the physician has not performed an abortion, the name and address of the facility where the required information was provided and if executed by the woman, a copy of the certification form required. This form shall be maintained in the woman's medical record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

### §4433. Drug or Chemical Induced Abortion

A. When any drug or chemical is used for the purpose of inducing an abortion as defined in R.S. 40:1299.35.2.1, the physician who prescribed the drug or chemical shall be in the same room and in the physical presence of the pregnant woman when the drug or chemical is initially administered, dispensed, or otherwise provided to the pregnant woman.

B. Documentation shall be recorded as to the date, time, method and name and signature of the physician who initially administered, dispensed, or otherwise provided the drug or chemical to the pregnant woman. This documentation shall be maintained in the patient's medical record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

### §4435. Intra-operative Procedures

A. The outpatient abortion facility shall ensure that emergency medical equipment and supplies as required by the governing body, medical director and medical staff are available for intra-operative care and shall include, but not limited to:

1. surgical or gynecologic table;
2. surgical instrumentation;
3. emergency drugs for stabilizing and/or treating medical and surgical complications as approved by the medical director;
4. oxygen;
5. intravenous fluids; and
6. sterile dressing supplies.

B. The physician performing the abortion shall be present on the licensed premises prior to the administration of any type of anesthesia.

C. The outpatient abortion facility shall ensure that the medical equipment required for an abortion shall be maintained and immediately available to the physician in the procedure and/or recovery room(s) to provide emergency medical care and services.

D. During the abortion procedure, the patient shall be assessed and monitored by a licensed nurse for the following: level of consciousness, respiratory status, cardiovascular status, and any potential sequelae related to the abortion procedure. The results of this assessment shall be documented in the patient's medical record.

E. Immediately following the abortion procedure, the patient shall be assessed and monitored by a licensed nurse for the following: level of consciousness, respiratory status, cardio-vascular status, and any potential sequelae related to the abortion procedure. The results of this assessment shall be documented in the patient's medical record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

#### **§4437. Post-Operative Care, Procedures, and Discharge**

##### **A. Post-Operative Care and Procedures**

1. The outpatient abortion facility shall have immediately available a supply of emergency drugs for stabilizing and/or treating medical and surgical complications for post-operative care on the licensed premises.

2. The patient's recovery shall be supervised by a licensed physician or a licensed nurse trained in post-operative care.

3. If general anesthesia is administered during the abortion procedure, the outpatient abortion facility shall have licensed nursing personnel trained in post-anesthesia care.

4. Upon completion of an abortion procedure, the physician shall immediately perform a gross examination of the uterine contents and shall document the findings in the patient's medical record. If no products of conception are visible, the physician shall assess the patient for risk of complications of an incomplete abortion or ectopic pregnancy.

5. Upon admission to the recovery room, the patient shall be assessed for the following, including, but not limited to: level of consciousness, respiratory status, cardio-vascular status, pain level, bleeding, and any potential sequelae related to the abortion procedure. The results of this assessment shall be documented in the patient's medical record.

6. A patient shall not be left unattended in the recovery room.

7. Rh immunoglobulin administration shall be offered to Rh-negative women and documented in the patient's medical record. If Rh immunoglobulin is not administered in the facility, one of the following is required:

a. informed waiver signed by a patient who refuses RH immunoglobulin; or

b. documentation of other arrangements for administration of RH immunoglobulin.

##### **B. Discharge Procedures**

1. The patient shall be given verbal and written post-operative instructions for follow-up care. A contact telephone number for post-operative care/services from the facility shall be available to the patient on a 24-hour basis.

2. A member of the medical staff shall remain on the licensed premises until each patient is assessed to be awake, alert, and medically stable prior to discharge.

3. A copy of the discharge instructions signed by the patient and the physician shall be maintained in the patient's medical record.

4. The outpatient abortion facility shall develop, implement, enforce, monitor, and annually review written policies and procedures to ensure that products of conception are disposed of in compliance with Occupational Safety and Health Administration (OSHA), Environmental Protection Agency (EPA), and with any other applicable federal, state, and local statutes, laws, ordinances, and department rules and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

#### **§4439. Anesthesia Services**

A. Subject to the approval of the medical director, the outpatient abortion facility shall develop, implement, monitor, enforce, and annually review written policies and procedures governing the preparation of and administration of drugs relating to the types of anesthesia administered during the abortion procedure. The outpatient abortion facility shall provide training and evaluation for competency of the types of anesthesia administered during the abortion procedure.

B. Qualifications to Administer Anesthesia. Local anesthesia, nitrous oxide, intramuscular, oral, and intravenous sedation shall be administered by the physician performing the abortion or by licensed nursing staff who have been deemed competent to administer sedation under the orders and supervision of the physician or pursuant to their scope of practice as defined under the Nurse Practice Act.

C. The physician performing the abortion shall be present on the licensed premises prior to the administration of all types of anesthesia.

D. General anesthesia, if used, shall be administered by an anesthesiologist or certified registered nurse-anesthetist (CRNA) who is under the supervision of the physician performing the abortion.

E. When there is a general anesthesia patient present on the licensed premises, personnel trained in the use of all emergency equipment required shall be present on the premises.

F. A physician shall be present on the licensed premises during the post-anesthesia recovery period until the patient is fully reacted and stable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

#### **Subchapter D. Physical Environment**

#### **§4445. General Requirements**

##### **A. General Provisions**

1. The outpatient abortion facility shall be designed, constructed, equipped, and maintained to protect the health and safety of patients, personnel, and the public at all times.

2. All openings to the outside shall be maintained to protect against the entrance of insects and animals.

3. An area for at least one stretcher and one wheelchair shall be provided. The area shall not encroach upon any required egress path or other required clear dimension.

4. Flooring in all patient areas shall be readily cleanable, monolithic and joint free, and slip-resistant in accordance with the American Society for Testing and Materials (ASTM), C1028-07e1.

5. Wall finishes in all patient areas shall be smooth, moisture resistant, washable, and free of fissures, open joints, or crevices that may retain or permit passage of dirt particles.

6. Wall bases in all patient areas shall be monolithic and coved with the floor, tightly sealed to the wall, and constructed without voids.

7. A separate waiting area shall be provided that is sufficient in size to provide seating space for patients, staff, and visitors of the patient.

8. Toilet facilities for patients, staff, and visitors shall be installed and maintained in accordance with the requirements of Part XIV (Plumbing) and Part XVII (Public Buildings, Schools, and Other Institutions) of the Louisiana state Sanitary Code (LAC 51:XIV and XVII, respectively).

a. Every toilet room shall contain at least one water closet and one lavatory. Such toilet facilities shall be provided with ventilation in accordance with the requirements of LAC 51:XIV and XVII.

b. Hot and cold water delivered through a mixing faucet, soap, and mechanical hand drying devices and/or disposable paper towels shall be provided at all hand washing lavatories/stations.

c. Showers or shower/tub combinations, if provided, shall meet the requirements of LAC 51:XIV.

B. Signage. The outpatient abortion facility shall provide:

1. an exterior sign that can be viewed by the public. The sign shall contain, at a minimum, the "DBA" name of the facility as it appears on the outpatient abortion facility license issued by the department;

2. clearly identifiable and distinguishable signs for outpatient abortion facilities operating within another facility which shall comply with the provisions of R.S. 40:2007.

#### C. Procedure Room

1. Abortions shall be performed in a segregated procedure room, removed from general traffic lines with a minimum clear floor area of 360 square feet with a minimum clear dimension of 18 feet.

2. There shall be a hand washing station with hands-free or wrist blade-operable controls within each procedure room and within each recovery room. Fixtures shall not encroach upon any required egress path or other required clear dimension.

#### D. Recovery Area

1. The outpatient abortion facility shall have a separate recovery room or area with a minimum clear floor area of 80 square feet with a minimum of 4 feet between patient stretchers or beds and adjacent walls (at the stretcher's sides and foot), and at least 3 feet from the foot of the stretcher or bed to the closed cubicle curtain.

2. The outpatient abortion facility shall have a nurse's station equipped with a countertop, space for supplies, provisions for charting, and a communication system. The nursing station shall be arranged to provide for direct visual observation of all traffic into the recovery area.

E. Equipment and Supply Storage Areas. The outpatient abortion facility shall have:

1. a soiled utility room which contains a flushing-rim clinical sink or equivalent flushing-rim sink, a work counter, a hand washing station, waste receptacle(s), and a space for soiled linen;

2. a clean utility room which is used for clean or sterile supplies;

3. an equipment and supply storage room with minimum 70 square feet of floor space shall be provided for equipment and supplies used in the procedure room;

4. a designated separate space shall be provided for soiled materials storage. Soiled materials shall not be stored or transported through the clean laundry area.

F. If the outpatient abortion facility maintains an in-house laundry, the areas shall be designed in accordance with acceptable hospital laundry design.

G. Signage in Abortion Facilities. The outpatient abortion facility shall ensure a sign is obtained from the department in accordance with the Forced Abortion Prevention Sign Act.

1. Display. The sign shall be posted on the licensed premises and shall be clearly visible to patients. The sign provided shall be conspicuously posted in each patient admission area, waiting room, and patient consultation room used by patients on whom abortions are performed, induced, prescribed for, or who are provided with the means for an abortion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

#### §4447. Infection Control

A. The outpatient abortion facility shall develop, implement, enforce, monitor, and annually review its written infection control program. The purpose of this program shall seek to minimize infections and communicable diseases through prevention, investigation, and reporting of infections. This program shall include all contracted services.

B. The outpatient abortion facility shall develop, implement, enforce, monitor, and annually review, with the approval of the medical director, written policies and procedures for preventing, identifying, reporting, investigating, controlling, and immediately implementing corrective actions relative to infections and communicable diseases of patients and personnel. At a minimum, the policies shall address:

1. alcohol based hand rub and hand hygiene;
2. use of all types of gloves;
3. decontamination of equipment between each patient use, including, but not limited to, chairs and procedure room tables;
4. linen cleaning, if applicable;
5. waste management;
6. environmental cleaning;
7. reporting, investigating, and monitoring of surgical infections;
8. sterilization procedures and processes, if applicable;
9. single use devices;

10. disinfecting procedures and processes; and

11. breaches of infection control practices.

C. Supplies shall not be reused if labeled for single use.

D. The outpatient abortion facility shall develop, implement, enforce, monitor, and annually review written policies and procedures which require immediate reporting, according to the latest criteria established by the Centers for Disease Control (CDC), Office of Public Health (OPH) and the Occupational Safety and Health Administration (OSHA), of the suspected or confirmed diagnosis of a communicable disease.

E. The outpatient abortion facility shall develop, implement, enforce, monitor, and annually review a written waste management program that identifies and controls wastes and hazardous materials to prevent contamination and spread of infection within the facility. The program shall comply with all applicable laws and regulations governing wastes and hazardous materials and the safe handling of these materials.

F. There shall be a separate sink for cleaning instruments and disposal of liquid waste.

G. The outpatient abortion facility shall develop, implement, and enforce/maintain written policies and procedures to ensure items are contained and handled during the sterilization process to assure sterility is not compromised prior to use.

H. After sterilization, instruments shall be stored in a designated clean area so that sterility is not compromised.

I. Sterile packages are inspected for integrity and compromised packages shall be reprocessed before use.

J. The outpatient abortion facility shall develop, implement, enforce, monitor, and annually review written policies and procedures governing the following:

1. the handling, processing, storing, and transporting of clean and dirty laundry;

2. special cleaning and decontamination processes are employed for contaminated linens, if an in-house laundry is maintained on the licensed premises; and

3. housekeeping services maintain a safe and clean environment.

K. Housekeeping supplies shall be provided to adequately maintain the licensed premises.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

#### **§4449. Laboratory Services**

A. The outpatient abortion facility shall have laboratory services available to meet the needs of its patients.

B. The outpatient abortion facility shall maintain a clinical laboratory improvement amendment (CLIA) certificate for the laboratory services provided on the licensed premises.

C. The outpatient abortion facility shall ensure that all contracted laboratory services are provided by a CLIA certified laboratory.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

#### **§4451. Pharmaceutical Services**

A. All outpatient abortion facilities shall have a controlled dangerous substance (CDS) license issued by the Louisiana Board of Pharmacy and a Drug Enforcement Agency (DEA) registration.

B. The outpatient abortion facility shall develop, implement, enforce, monitor, and annually review written policies and procedures that govern the safe storage, prescribing, dispensing, preparing and administering of drugs and biologicals on the licensed premises.

C. Storage Areas. The outpatient abortion facility shall provide a designated secure storage area for storing drugs and biologicals.

1. The designated storage area shall be constructed and maintained to prevent unauthorized access.

2. The designated storage area shall adhere to the manufacturer's suggested recommendations for storage of drugs.

3. Locked areas that are used to store medications including controlled substances, shall conform to all applicable federal and state laws, and the outpatient abortion facility's policies and procedures.

D. The outpatient abortion facility shall maintain written records documenting the ordering, receiving, dispensing, administering, and disposing of unused drugs.

E. The outpatient abortion facility shall maintain written documentation of all drugs prescribed and/or dispensed to each patient, including, but not limited to the:

1. full name of the patient;

2. name of the prescribing and/or dispensing physician;

3. name and strength of the drug;

4. quantity prescribed and/or dispensed; and

5. date of issue.

F. Preparation and Administration of Drugs. The outpatient abortion facility shall develop, implement, enforce, monitor, and review annually written policies and procedures governing the preparation of drugs and biologicals.

1. The outpatient abortion facility shall ensure that all drugs and biologicals are prepared and administered pursuant to an order from an individual who has prescriptive authority under the laws of Louisiana. Each order shall be in writing, patient specific, dated, timed, and signed by an individual with prescriptive authority under the laws of Louisiana. A copy of such orders shall be maintained in each, individual patient medical record.

G. The outpatient abortion facility shall order and maintain a supply of emergency drugs for stabilizing and/or treating medical and surgical complications on the licensed premises as authorized by the medical director.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this

Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert  
Secretary

1311#057

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Bureau of Health Services Financing

Adult Dentures Program  
Reimbursement Rate Reduction  
(LAC 50:XXV.701)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XXV.701 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 14 of the 2013 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures remain at the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R. S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

Due to a budgetary shortfall in state fiscal year 2013, the Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for adult denture services to reduce the reimbursement rates (*Louisiana Register*, Volume 39, Number 2).

Due to a budgetary shortfall in state fiscal year 2014, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for adult denture services to reduce the reimbursement rates (*Louisiana Register*, Volume 39, Number 8). This Emergency Rule is being promulgated to continue the provisions of the August 1, 2013 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective November 30, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for adult denture services to reduce the reimbursement rates.

#### Title 50

#### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part XXV. Adult Dentures

#### Chapter 7. Reimbursement

#### §701. Fees

A. - C. ...

D. Effective for dates of service on or after August 1, 2013, the reimbursement for adult denture services shall be reduced by 1.5 percent of the fee amounts on file as of July 31, 2013.

1. Removable prosthodontics shall be excluded from the August 1, 2013 reimbursement rate reduction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:81 (January 2005), repromulgated LR 31:1589 (July 2005), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:316 (February 2013), LR 39:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert  
Secretary

1311#061

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Bureau of Health Services Financing and Office of Behavioral Health

Behavioral Health Services  
Physician Payment Methodology  
(LAC 50:XXXIII.Chapter 17)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health adopt LAC 50:XXXIII.Chapter 17 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing adopted provisions to implement a coordinated behavioral health services system under the Medicaid Program, called the Louisiana Behavioral Health Partnership (LBHP), to provide adequate coordination and delivery of behavioral health services through the utilization of a Statewide Management Organization (*Louisiana Register*, Volume 38, Number 2).

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health promulgated an Emergency Rule which amended the provisions governing the reimbursement of physician services rendered in the LBHP in order to establish a distinct payment methodology that is independent of the payment methodology established for physicians in the Professional Services Program (*Louisiana Register*, Volume 39, Number

4). This Emergency Rule is being promulgated to continue the provisions of the April 20, 2013 Emergency Rule.

This action is being taken to protect the public health and welfare of Medicaid recipients who rely on behavioral health services by ensuring continued provider participation in the Medicaid Program.

Effective December 18, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health amend the provisions governing behavioral health services rendered in the Medicaid Program.

#### **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part XXXIII. Behavioral Health Services**

##### **Subpart 2. General Provisions**

#### **Chapter 17. Behavioral Health Services**

##### **Reimbursements**

##### **§1701. Physician Payment Methodology**

A. The reimbursement rates for physician services rendered under the Louisiana Behavioral Health Partnership (LBHP) shall be a flat fee for each covered service as specified on the established Medicaid fee schedule. The reimbursement rates shall be based on a percentage of the Louisiana Medicare Region 99 allowable for a specified year.

B. Effective for dates of service on or after April 20, 2013, the reimbursement for behavioral health services rendered by a physician under the LBHP shall be 75 percent of the 2009 Louisiana Medicare Region 99 allowable for services rendered to Medicaid recipients.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 39:

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert  
Secretary

1311#062

### **DECLARATION OF EMERGENCY**

#### **Department of Health and Hospitals Bureau of Health Services Financing**

Crisis Receiving Centers  
Licensing Standards  
(LAC 48:I.Chapters 53 and 54)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 48:I.Chapters 53 and 54 in the Medical Assistance Program as authorized by R.S. 36:254 and R.S. 28:2180.13. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1), et seq.,

and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule to adopt provisions to establish licensing standards for Level III crisis receiving centers (CRCs) in order to provide intervention and crisis stabilization services for individuals who are experiencing a behavioral health crisis (*Louisiana Register*, Volume 39, Number 4). This Emergency Rule is being promulgated to continue the provisions of the April 20, 2013 Emergency Rule. This action is being taken to prevent imminent peril to the public health, safety or welfare of behavioral health clients who are in need of crisis stabilization services.

Effective December 18, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing adopts provisions governing licensing standards for level III crisis receiving centers.

#### **Title 48**

### **PUBLIC HEALTH—GENERAL**

#### **Part 1. General Administration**

##### **Subpart 3. Licensing and Certification**

#### **Chapter 53. Level III Crisis Receiving Centers**

##### **Subchapter A. General Provisions**

##### **§5301. Introduction**

A. The purpose of this Chapter is to:

1. provide for the development, establishment, and enforcement of statewide licensing standards for the care of patients and clients in level III crisis receiving centers (CRCs);
2. ensure the maintenance of these standards; and
3. regulate conditions in these facilities through a program of licensure which shall promote safe and adequate treatment of clients of behavioral health facilities.

B. The purpose of a CRC is to provide intervention and stabilization services in order for the client to achieve stabilization and be discharged and referred to the lowest appropriate level of care that meets the client's needs. The estimated length of stay in a CRC is 3-7 days.

C. In addition to the requirements stated herein, all licensed CRCs shall comply with applicable local, state, and federal laws and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

##### **§5303. Definitions**

*Active Client*—a client of the CRC who is currently receiving services from the CRC.

*Administrative Procedure Act*—R.S. 49:950 et seq.

*Administrative Review*—Health Standards Section's review of documentation submitted by the center in lieu of an on-site survey.

*Adult*—a person that is at least 18 years of age.

*Authorized Licensed Prescriber*—a physician or nurse practitioner licensed in the state of Louisiana and with full prescriptive authority authorized by the CRC to prescribe treatment to clients of the specific CRC at which he/she practices.

*Building and Construction Guidelines*—structural and design requirements applicable to a CRC; does not include occupancy requirements.

*Change of Ownership (CHOW)*—the sale or transfer, whether by purchase, lease, gift or otherwise, of a CRC by a person/corporation of controlling interest that results in a change of ownership or control of 30 percent or greater of either the voting rights or assets of a CRC or that results in the acquiring person/corporation holding a 50 percent or greater interest in the ownership or control of the CRC.

*CLIA*—clinical laboratory improvement amendment.

*Client Record*—a single complete record kept by the CRC which documents all treatment provided to the client. The record may be electronic, paper, magnetic material, film or other media.

*Construction Documents*—building plans and specifications.

*Contraband*—any object or property that is against the CRC's policies and procedures to possess.

*Coroner's Emergency Certificate (CEC)*—a certificate issued by the coroner pursuant to R.S. 28:53.3.

*Crisis Receiving Services*—services related to the treatment of people in behavioral crisis, including crisis identification, intervention and stabilization.

*Department*—the Louisiana Department of Health and Hospitals.

*Direct Care Staff*—any member of the staff, including an employee or contractor, that provides the services delineated in the comprehensive treatment plan. Food services, maintenance and clerical staff and volunteers are not considered as direct care staff.

*Disaster or Emergency*—a local, community-wide, regional or statewide event that may include, but is not limited to:

1. tornados;
2. fires;
3. floods;
4. hurricanes;
5. power outages;
6. chemical spills;
7. biohazards;
8. train wrecks; or
9. declared health crisis.

*Division of Administrative Law (DAL)*—the Louisiana Department of State Civil Service, Division of Administrative Law or its successor entity.

*Grievance*—a formal or informal written or verbal complaint that is made to the CRC by a client or the client's family or representative regarding the client's care, abuse or neglect when the complaint is not resolved at the time of the complaint by staff present.

*HSS*—the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Care Integrity, Health Standards Section.

*Human Services Field*—an academic program with a curriculum content in which at least 70 percent of the required courses for the major field of study are based upon the core mental health disciplines.

*Level III Crisis Receiving Center (or Center or CRC)*—an agency, business, institution, society, corporation, person or

persons, or any other group, licensed by the Department of Health and Hospitals to provide crisis identification, intervention and stabilization services for people in behavioral crisis. A CRC shall be no more than 16 beds.

*Licensed Mental Health Professional (LMHP)*—an individual who is licensed in the State of Louisiana to diagnose and treat mental illness or substance abuse, acting within the scope of all applicable State laws and their professional license. A LMHP must be one of the following individuals licensed to practice independently:

1. a physician/psychiatrist;
2. a medical psychologist;
3. a licensed psychologist;
4. a licensed clinical social worker (LCSW);
5. a licensed professional counselor (LPC);
6. a licensed marriage and family therapist (LMFT);
7. a licensed addiction counselor (LAC); or
8. an advanced practice registered nurse or APRN

(must be a nurse practitioner specialist in adult psychiatric and mental health and family psychiatric and mental health, or a certified nurse specialist in psychosocial, gerontological psychiatric mental health, adult psychiatric and mental health and child-adolescent mental health and may practice to the extent that services are within the APRN's scope of practice).

*LSBME*—Louisiana State Board of Medical Examiners.

*MHERE*—Mental Health Emergency Room Extension operating as a unit of a currently-licensed hospital.

*Minor*—a person under the age of 18.

*OBH*—the Department of Health and Hospitals, Office of Behavioral Health.

*OHSEP*—Office of Homeland Security and Emergency Preparedness.

*On Call*—immediately available for telephone consultation and less than one hour from ability to be on duty.

*On Duty*—scheduled, present, and awake at the site to perform job duties.

*OPC*—order for protective custody issued pursuant to R.S. 28:53.2.

*OSFM*—the Louisiana Department of Public Safety and Corrections, Office of State Fire Marshal.

*PEC*—an emergency certificate executed by a physician, psychiatric mental health nurse practitioner, or psychologist pursuant to R.S. 28:53.

*Physician*—an individual who holds a medical doctorate or a doctor of osteopathy from a medical college in good standing with the LSBME and a license, permit, certification, or registration issued by the LSBME to engage in the practice of medicine in the state of Louisiana.

*Qualifying Experience*—experience used to qualify for any position that is counted by using one year equals 12 months of full-time work.

*Seclusion Room*—a room that may be secured in which one client may be placed for a short period of time due to the client's increased need for security and protection.

*Shelter in Place*—when a center elects to stay in place rather than evacuate when located in the projected path of an approaching storm of tropical storm strength or a stronger storm.

*Sleeping Area*—a single constructed room or area that contains a minimum of three beds.

*Tropical Storm Strength*—a tropical cyclone in which the maximum sustained surface wind speed (using the U.S. 1 minute average standard) ranges from 34 kt (39 mph 17.5 m/s) to 63 kt (73 mph 32.5 mps).

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

## Subchapter B. Licensing

### §5309. General Licensing Provisions

A. All entities providing crisis receiving services shall be licensed by the Department of Health and Hospitals (DHH). It shall be unlawful to operate as a CRC without a license issued by the department. DHH is the only licensing authority for CRCs in Louisiana.

B. A CRC license authorizes the center to provide crisis receiving services.

C. The following entities are exempt from licensure under this Chapter:

1. community mental health centers;
2. hospitals;
3. nursing homes;
4. psychiatric rehabilitative treatment facilities;
5. school-based health centers;
6. therapeutic group homes;
7. HCBS agencies;
8. substance abuse/addictive disorder facilities;
9. mental health clinics;
10. center-based respites;
11. MHEREs;
12. individuals certified by OBH to provide crisis intervention services; and
13. federally-owned facilities.

D. A CRC license is not required for individual or group practice of LMHPs providing services under the auspices of their individual license(s).

E. A CRC license shall:

1. be issued only to the person or entity named in the license application;
2. be valid only for the CRC to which it is issued and only for the geographic address of that CRC approved by DHH;
3. be valid for up to one year from the date of issuance, unless revoked, suspended, or modified prior to that date, or unless a provisional license is issued;
4. expire on the expiration date listed on the license, unless timely renewed by the CRC;
5. be invalid if sold, assigned, donated or transferred, whether voluntary or involuntary; and
6. be posted in a conspicuous place on the licensed premises at all times.

F. In order for the CRC to be considered operational and retain licensed status, the following applicable operational requirements shall be met. The CRC shall:

1. be open and operating 24 hours per day, 7 days per week;
2. have the required staff on duty at all times to meet the needs of the clients; and
3. be able to screen and either admit or refer all potential clients at all times.

G. The licensed CRC shall abide by any state and federal law, rule, policy, procedure, manual or memorandum pertaining to crisis receiving centers.

H. The CRC shall permit designated representatives of the department, in the performance of their duties, to:

1. inspect all areas of the center's operations; and
2. conduct interviews with any staff member, client, or other person as necessary.

I. CRC Names

1. A CRC is prohibited from using:
  - a. the same name as another CRC;
  - b. a name that resembles the name of another center;
  - c. a name that may mislead the client or public into believing it is owned, endorsed, or operated by the state of Louisiana when it is not owned, endorsed, or operated by the state of Louisiana.

J. Plan Review

1. Any entity that intends to operate as a CRC, except one that is converting from a MHERE or an existing CRC, shall complete the plan review process and obtain approval for its construction documents for the following types of projects:

- a. new construction;
- b. any entity that intends to operate and be licensed as a CRC in a physical environment that is not currently licensed as a CRC; or
- c. major alterations.

2. The CRC shall submit one complete set of construction documents with an application and review fee to the OSFM for review. Plan review submittal to the OSFM shall be in accordance with R.S. 40:1574, and the current *Louisiana Administrative Code* (LAC) provisions governing fire protection for buildings (LAC 55:V.Chapter 3 as of this promulgation), and the following criteria:

- a. any change in the type of license shall require review for requirements applicable at the time of licensing change;
- b. requirements applicable to occupancies, as defined by the most recently state-adopted edition of *National Fire Protection Association (NFPA) 101*, where services or treatment for four or more patients are provided;
- c. requirements applicable to construction of business occupancies, as defined by the most recently state-adopted edition of NFPA 101; and
- d. the specific requirements outlined in the physical environment requirements of this Chapter.

3. Construction Document Preparation

a. The CRC's construction documents shall be prepared by a Louisiana licensed architect or licensed engineer as governed by the licensing laws of the state for the type of work to be performed.

b. The CRC's construction documents shall be of an architectural or engineering nature and thoroughly illustrate an accurately drawn and dimensioned project that contains noted plans, details, schedules and specifications.

c. The CRC shall submit at least the following in the plan review process:

- i. site plans;
- ii. floor plan(s). These shall include architectural, mechanical, plumbing, electrical, fire protection, and if required by code, sprinkler and fire alarm plans;

- iii. building elevations;
- iv. room finish, door, and window schedules;
- v. details pertaining to Americans with Disabilities Act (ADA) requirements; and
- vi. specifications for materials.

4. Upon OSFM approval, the CRC shall submit the following to DHH:

- a. the final construction documents approved by OSFM; and
- b. OSFM's approval letter.

**K. Waivers**

1. The secretary of DHH may, within his/her sole discretion, grant waivers to building and construction guidelines which are not part of or otherwise required under the provisions of the state Sanitary Code.

2. In order to request a waiver, the CRC shall submit a written request to HSS that demonstrates:

- a. how patient safety and quality of care offered is not comprised by the waiver;
- b. the undue hardship imposed on the center if the waiver is not granted; and
- c. the center's ability to completely fulfill all other requirements of service.

3. DHH will make a written determination of each waiver request.

4. Waivers are not transferable in an ownership change or geographic change of location, and are subject to review or revocation upon any change in circumstances related to the waiver.

5. DHH prohibits waivers for new construction.

L. A person or entity convicted of a felony or that has entered a guilty plea or a plea of nolo contendere to a felony is prohibited from being the CRC or owner, clinical supervisor or any managing employee of a CRC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

**§5311. Initial Licensure Application Process**

A. Any entity, organization or person interested in operating a crisis receiving center must submit a completed initial license application packet to the department for approval. Initial CRC licensure application packets are available from HSS.

B. A person/entity/organization applying for an initial license must submit a completed initial licensing application packet which shall include:

- 1. a completed CRC licensure application;
- 2. the non-refundable licensing fee as established by statute;
- 3. the approval letter of the architectural center plans for the CRC from OSFM, if the center must go through plan review;
- 4. the on-site inspection report with approval for occupancy by the OSFM, if applicable;
- 5. the health inspection report with approval of occupancy from the Office of Public Health (OPH);
- 6. a statewide criminal background check, including sex offender registry status, on all owners and managing employees;

7. except for governmental entities or organizations, proof of financial viability, comprised of the following:

- a. a line of credit issued from a federally insured, licensed lending institution in the amount of at least \$100,000;

- b. general and professional liability insurance of at least \$500,000; and

- c. worker's compensation insurance;

8. an organizational chart and names, including position titles, of key administrative personnel and the governing body;

9. a legible floor sketch or drawing of the premises to be licensed;

10. a letter of intent indicating whether the center will serve minors or adults and the center's maximum number of beds;

11. if operated by a corporate entity, such as a corporation or an limited liability corporation (LLC), current proof of registration and status with the Louisiana Secretary of State's office;

12. a letter of recommendation from the OBH regional office or its designee; and

13. any other documentation or information required by the department for licensure.

C. If the initial licensing packet is incomplete, the applicant shall:

- 1. be notified of the missing information; and

- 2. be given 90 days from receipt of the notification to submit the additional requested information or the application will be closed.

D. Once the initial licensing application is approved by DHH, notification of such approval shall be forwarded to the applicant.

E. The applicant shall notify DHH of initial licensing survey readiness within the required 90 days of receipt of application approval. If an applicant fails to notify DHH of initial licensing survey readiness within 90 days, the application will be closed.

F. If an initial licensing application is closed, an applicant who is still interested in operating a CRC must submit a:

- 1. new initial licensing packet; and
- 2. non-refundable licensing fee.

G. Applicants must be in compliance with all appropriate federal, state, departmental or local statutes, laws, ordinances, rules, regulations and fees before the CRC will be issued an initial license to operate.

H. An entity that intends to become a CRC is prohibited from providing crisis receiving services to clients during the initial application process and prior to obtaining a license, unless it qualifies as one of the following facilities:

- 1. a hospital-based CRC;
- 2. an MHERE;
- 3. an MHERE that has communicated its intent to become licensed as a CRC in collaboration with the department prior to February 28, 2013; or
- 4. a center-based respite.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

### §5313. Initial Licensing Surveys

A. Prior to the initial license being issued, an initial licensing survey shall be conducted on-site to ensure compliance with the licensing laws and standards.

B. If the initial licensing survey finds that the center is compliant with all licensing laws, regulations and other required statutes, laws, ordinances, rules, regulations, and fees, the department shall issue a full license to the center.

C. In the event that the initial licensing survey finds that the center is noncompliant with any licensing laws or regulations, or any other required rules or regulations, that present a potential threat to the health, safety, or welfare of the clients, the department shall deny the initial license.

D. In the event that the initial licensing survey finds that the center is noncompliant with any licensing laws or regulations, or any other required rules or regulations, and the department determines that the noncompliance does not present a threat to the health, safety or welfare of the clients, the department:

1. may issue a provisional initial license for a period not to exceed six months; and

2. shall require the center to submit an acceptable plan of correction.

a. The department may conduct a follow-up survey following the initial licensing survey after receipt of an acceptable plan of correction to ensure correction of the deficiencies. If all deficiencies are corrected on the follow-up survey, a full license will be issued.

b. If the center fails to correct the deficiencies, the initial license may be denied.

E. The initial licensing survey of a CRC shall be an announced survey. Follow-up surveys to the initial licensing surveys are unannounced surveys.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

### §5315. Types of Licenses

A. The department has the authority to issue the following types of licenses.

#### 1. Initial License

a. The department shall issue a full license to the CRC when the initial licensing survey indicates the center is compliant with:

- i. all licensing laws and regulations;
- ii. all other required statutes, laws, ordinances, rules, regulations; and
- iii. fees.

b. The license shall be valid until the expiration date shown on the license, unless the license is modified, revoked, or suspended.

#### 2. Provisional Initial License

a. The department may issue a provisional initial license to the CRC when the initial licensing survey finds that the CRC is noncompliant with any licensing laws or regulations or any other required statutes, laws, ordinances, rules, regulations or fees, but the department determines that the noncompliance does not present a threat to the health, safety or welfare of the clients.

i. The center shall submit a plan of correction to the department for approval, and the center shall be required to correct all such noncompliance or deficiencies prior to the expiration of the provisional license.

ii. If all such noncompliance or deficiencies are corrected on the follow-up survey, a full license will be issued.

iii. If all such noncompliance or deficiencies are not corrected on the follow-up survey, or new deficiencies affecting the health, safety or welfare of a client are cited, the provisional license will expire and the center shall be required to begin the initial licensing process again by submitting a new initial license application packet and the appropriate licensing fee.

3. Renewal License. The department may issue a renewal license to a licensed CRC that is in substantial compliance with all applicable federal, state, departmental, and local statutes, laws, ordinances, rules, regulations and fees. The license shall be valid until the expiration date shown on the license, unless the license is modified, revoked, suspended, or terminated.

4. Provisional License. The department may issue a provisional license to a licensed CRC for a period not to exceed six months.

a. A provisional license may be issued for the following reasons:

i. more than five deficiencies cited during any one survey;

ii. four or more validated complaints in a consecutive 12-month period;

iii. a deficiency resulting from placing a client at risk for serious harm or death;

iv. failure to correct deficiencies within 60 days of notification of such deficiencies, or at the time of a follow-up survey; or

v. failure to be in substantial compliance with all applicable federal, state, departmental and local statutes, laws, ordinances, rules regulations and fees at the time of renewal of the license.

b. The department may extend the provisional license for an additional period not to exceed 90 days in order for the center to correct the deficiencies.

c. The center shall submit an acceptable plan of correction to DHH and correct all noncompliance or deficiencies prior to the expiration of the provisional license.

d. The department shall conduct a follow-up survey of the CRC, either on-site or by administrative review, prior to the expiration of the provisional license.

e. If the follow-up survey determines that the CRC has corrected the deficiencies and has maintained compliance during the period of the provisional license, the department may issue a license that will expire on the expiration date of the most recent renewal or initial license.

f. The provisional license shall expire if:

i. the center fails to correct the deficiencies by the follow-up survey; or

ii. the center is cited with new deficiencies at the follow-up survey indicating a risk to the health, safety, or welfare of a client.

g. If the provisional license expires, the center shall be required to begin the initial licensing process by submitting a:

- i. new initial license application packet; and
- ii. non-refundable fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

#### **§5317. Changes in Licensee Information or Personnel**

A. Within five days of the occurrence, the CRC shall report in writing to HSS the following changes to the:

1. CRC's entity name;
2. business name;
3. mailing address; or
4. telephone number.

B. Any change to the CRC's name or "doing business as" name requires a \$25 nonrefundable fee for the issuance of an amended license with the new name.

C. A CRC shall report any change in the CRC's key administrative personnel within five days of the change.

1. Key administrative personnel include the:
  - a. CRC manager;
  - b. clinical director; and
  - c. nurse manager.

2. The CRC's notice to the department shall include the incoming individual's:

- a. name;
- b. date of appointment to the position; and
- c. qualifications.

#### **D. Change of Ownership (CHOW)**

1. A CRC shall report a CHOW in writing to the department at least five days prior to the change. Within five days following the change, the new owner shall submit;

- a. the legal CHOW document;
- b. all documents required for a new license; and
- c. the applicable nonrefundable licensing fee.

2. A CRC that is under license revocation or denial or license renewal may not undergo a CHOW.

3. Once all application requirements are completed and approved by the department, a new license shall be issued to the new owner.

#### **E. Change in Physical Address**

1. A CRC that intends to change the physical address of its geographic location shall submit:

- a. a written notice to HSS of its intent to relocate;
- b. a plan review request;
- c. a new license application;
- d. a nonrefundable license fee; and
- e. any other information satisfying applicable licensing requirements.

2. In order to receive approval for the change of physical address, the CRC must:

- a. have a plan review approval;
- b. have approval from OSFM and OPH;
- c. have an approved license application packet;
- d. be in compliance with other applicable licensing requirements; and
- e. have an on-site licensing survey prior to relocation of the center.

3. Upon approval of the requirements for a change in physical address, the department shall issue a new license to the CRC.

F. Any request for a duplicate license shall be accompanied by a \$25 fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

#### **§5319. Renewal of License**

A. A CRC license expires on the expiration date listed on the license, unless timely renewed by the CRC.

B. To renew a license, the CRC shall submit a completed license renewal application packet to the department at least 30 days prior to the expiration of the current license. The license renewal application packet includes:

1. the license renewal application;
2. a current State Fire Marshal report;
3. a current OPH inspection report;
4. the non-refundable license renewal fee;
5. any other documentation required by the department; and

6. except for governmental entities or organizations, proof of financial viability, comprised of the following:

- a. a line of credit issued from a federally insured, licensed lending institution in the amount of at least \$100,000;
- b. general and professional liability insurance of at least \$500,000; and
- c. worker's compensation insurance.

C. The department may perform an on-site survey and inspection of the center upon renewal.

D. Failure to submit a completed license renewal application packet prior to the expiration of the current license will result in the voluntary non-renewal of the CRC license upon the license's expiration.

E. The renewal of a license does not in any manner affect any sanction, civil monetary penalty, or other action imposed by the department against the center.

F. If a licensed CRC has been issued a notice of license revocation or suspension, and the center's license is due for annual renewal, the department shall deny the license renewal application and shall not issue a renewal license.

#### **G. Voluntary Non-Renewal of a License**

1. If a center fails to timely renew its license, the license:

- a. expires on the license's expiration date; and
- b. is considered a non-renewal and voluntarily surrendered.

2. There is no right to an administrative reconsideration or appeal from a voluntary surrender or non-renewal of the license.

3. If a center fails to timely renew its license, the center shall immediately cease providing services, unless the center is actively treating clients, in which case the center shall:

- a. within two days of the untimely renewal, provide written notice to HSS of the number of clients receiving treatment at the center;
- b. within two days of the untimely renewal, provide written notice to each active client's prescribing physician and to every client, or, if applicable, the client's parent or legal guardian, of the following:
  - i. voluntary non-renewal of license;
  - ii. date of closure; and
  - iii. plans for the transition of the client;

c. discharge and transition each client in accordance with this Chapter within 15 days of the license's expiration date; and

d. notify HSS of the location where records will be stored and the name, address, and phone number of the person responsible for the records.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

#### **§5321. Licensing Surveys**

A. The department may conduct periodic licensing surveys and other surveys as deemed necessary to ensure compliance with all laws, rules and regulations governing crisis receiving centers and to ensure client health, safety and welfare. These surveys may be conducted on-site or by administrative review and shall be unannounced.

B. If deficiencies are cited, the department may require the center to submit an acceptable plan of correction.

C. The department may conduct a follow-up survey following any survey in which deficiencies were cited to ensure correction of the deficiencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

#### **§5323. Complaint Surveys**

A. Pursuant to R.S. 40:2009.13 et seq., the department has the authority to conduct unannounced complaint surveys on crisis receiving centers.

B. The department shall issue a statement of deficiency to the center if it finds a deficiency during the complaint survey.

##### **C. Plan of Correction**

1. Once the department issues a statement of deficiencies, the department may require the center to submit an acceptable plan of correction.

2. If the department determines that other action, such as license revocation, is appropriate, the center:

- a. may not be required to submit a plan of correction; and
- b. will be notified of such action.

##### **D. Follow-up Surveys**

1. The department may conduct a follow-up survey following a complaint survey in which deficiencies were cited to ensure correction of the deficient practices.

2. If the department determines that other action, such as license revocation, is appropriate:

- a. a follow-up survey is not necessary; and
- b. the center will be notified of such action.

##### **E. Informal Reconsiderations of Complaint Surveys**

1. A center that is cited with deficiencies found during a complaint survey has the right to request an informal reconsideration of the deficiencies. The center's written request for an informal reconsideration must be received by HSS within 10 calendar days of the center's receipt of the statement of deficiencies.

2. An informal reconsideration for a complaint survey or investigation shall be conducted by the department as a desk review.

3. Correction of the violation or deficiency shall not be the basis for the reconsideration.

4. The center shall be notified in writing of the results of the informal reconsideration.

5. Except for the right to an administrative appeal provided in R.S. 40:2009.16, the informal reconsideration shall constitute final action by the department regarding the complaint survey, and there shall be no further right to an administrative appeal.

##### **F. Administrative Appeals**

1. To request an administrative appeal, the Division of Administrative Law must receive the center's written request for an appeal within 30 calendar days of the receipt of the results of the administrative reconsideration.

2. The administrative law judge is:

- a. limited to determining whether the survey was conducted properly or improperly; and
- b. precluded from overturning, deleting, amending or adding deficiencies or violations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

#### **§5325. Statement of Deficiencies**

A. The CRC shall make any statement of deficiencies available to the public upon request after the center submits a plan of correction that is accepted by the department or 90 days after the statement of deficiencies is issued to the center, whichever occurs first.

##### **B. Informal Reconsiderations**

1. Unless otherwise provided in statute or in this Chapter, a CRC has the right to an informal reconsideration of any deficiencies cited as a result of a survey.

2. Correction of the violation, noncompliance or deficiency shall not be the basis for the reconsideration.

3. The center's written request for informal reconsideration must be received by HSS within 10 days of the center's receipt of the statement of deficiencies.

4. If a timely request for an informal reconsideration is received, the department shall schedule and conduct the administrative reconsideration.

5. HSS shall notify the center in writing of the results of the informal reconsideration.

6. Except as provided pursuant to R.S. 40:2009.13 et seq., and as provided in this Chapter:

- a. the informal reconsideration decision is the final administrative decision regarding the deficiencies; and
- b. there is no right to an administrative appeal of such deficiencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

#### **§5327. Cessation of Business**

A. A CRC that intends to cease operations shall:

1. provide 30 days advance written notice to HSS and the active client, or if applicable, the client's parent(s), legal guardian, or designated representative;

2. discharge and transition all clients in accordance with this Chapter; and

3. provide 30 days advance written notice to DHH and the clients of the location where the records will be stored, including the name, address and phone number of the person responsible for the records.

B. A CRC that ceases operations as a result of a final revocation, denial or suspension shall notify HSS within 10 days of closure of the location where the records will be stored and the name, address and phone number of the person responsible for the records.

C. If a CRC fails to follow these procedures, the department may prohibit the owners, managers, officers, directors, and/or administrators from opening, managing, directing, operating, or owning a CRC for a period of two years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

### **§5329. Sanctions**

A. The department may issue sanctions for deficiencies and violations of law, rules and regulations that include:

1. civil fines;
2. directed plans of correction; and
3. license revocation or denial of license renewal.

B. The department may deny an application for an initial license or a license renewal, or may revoke a license in accordance with the Administrative Procedure Act.

C. The department may deny an initial license, revoke a license or deny a license renewal for any of the following reasons, including but not limited to:

1. failure to be in compliance with the CRC licensing laws, rules and regulations;
2. failure to be in compliance with other required statutes, laws, ordinances, rules or regulations;
3. failure to comply with the terms and provisions of a settlement agreement or education letter;
4. cruelty or indifference to the welfare of the clients;
5. misappropriation or conversion of the property of the clients;
6. permitting, aiding or abetting the unlawful, illicit or unauthorized use of drugs or alcohol within the center of a program;
7. documented information of past or present conduct or practices of an employee or other staff which are detrimental to the welfare of the clients, including but not limited to:
  - a. illegal activities; or
  - b. coercion or falsification of records;
8. failure to protect a client from a harmful act of an employee or other client including, but not limited to:
  - a. mental or physical abuse, neglect, exploitation or extortion;
  - b. any action posing a threat to a client's health and safety;
  - c. coercion;
  - d. threat or intimidation;
  - e. harassment; or
  - f. criminal activity;
9. failure to notify the proper authorities, as required by federal or state law or regulations, of all suspected cases of the acts outlined in Paragraph D.8 above;
10. knowingly making a false statement in any of the following areas, including but not limited to:
  - a. application for initial license or renewal of license;
  - b. data forms;
  - c. clinical records, client records or center records;

d. matters under investigation by the department or the Office of the Attorney General; or

e. information submitted for reimbursement from any payment source;

11. knowingly making a false statement or providing false, forged or altered information or documentation to DHH employees or to law enforcement agencies;

12. the use of false, fraudulent or misleading advertising; or

13. the CRC, an owner, officer, member, manager, administrator, medical director, managing employee, or clinical supervisor has pled guilty or nolo contendere to a felony, or is convicted of a felony, as documented by a certified copy of the record of the court;

14. failure to comply with all reporting requirements in a timely manner, as required by the department;

15. failure to allow or refusal to allow the department to conduct an investigation or survey or to interview center staff or clients;

16. interference with the survey process, including but not limited to, harassment, intimidation, or threats against the survey staff;

17. failure to allow or refusal to allow access to center or client records by authorized departmental personnel;

18. bribery, harassment, intimidation or solicitation of any client designed to cause that client to use or retain the services of any particular CRC;

19. cessation of business or non-operational status;

20. failure to repay an identified overpayment to the department or failure to enter into a payment agreement to repay such overpayment;

21. failure to timely pay outstanding fees, fines, sanctions or other debts owed to the department; or

22. failure to uphold client rights that may have resulted or may result in harm, injury or death of a client.

D. If the department determines that the health and safety of a client or the community may be at risk, the imposition of the license revocation or license non-renewal may be immediate and may be enforced during the pendency of the administrative appeal. The department will provide written notification to the center if the imposition of the action will be immediate.

E. Any owner, officer, member, manager, director or administrator of such CRC is prohibited from owning, managing, directing or operating another CRC for a period of two years from the date of the final disposition of any of the following:

1. license revocation;
2. denial of license renewal, except when due to cessation of business; or
3. the license is surrendered in lieu of adverse action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

### **§5331. Notice and Appeal of License Denial, License Revocation and Denial of License Renewal**

A. The department shall provide written notice to the CRC of the following:

1. license denial;
2. license revocation; or
3. license non-renewal or denial of license renewal.

B. The CRC has the right to an administrative reconsideration of the license denial, license revocation or license non-renewal.

1. If the CRC chooses to request an administrative reconsideration, the request must:

- a. be in writing addressed to HSS;
- b. be received by HSS within 10 days of the center's receipt of the notice of the license denial, license revocation or license non-renewal; and
- c. include any documentation that demonstrates that the determination was made in error.

2. If a timely request for an administrative reconsideration is received, HSS shall provide the center with written notification of the date of the administrative reconsideration.

3. The center may appear in person at the administrative reconsideration and may be represented by counsel.

4. HSS shall not consider correction of a deficiency or violation as a basis for the reconsideration.

5. The center will be notified in writing of the results of the administrative reconsideration.

C. The administrative reconsideration process is not in lieu of the administrative appeals process.

D. The CRC has a right to an administrative appeal of the license denial, license revocation or license non-renewal.

1. If the CRC chooses to request an administrative appeal, the request must:

- a. be received by the DAL within 30 days of:
  - i. the receipt of the results of the administrative reconsideration; or
  - ii. the receipt of the notice of the license denial, revocation or non-renewal, if the CRC chose to forego its rights to an administrative reconsideration;
- b. be in writing;
- c. include any documentation that demonstrates that the determination was made in error; and
- d. include the basis and specific reasons for the appeal.

2. The DAL shall not consider correction of a violation or a deficiency as a basis for the administrative appeal.

E. Administrative Appeals of License Revocations and License Non-renewals

1. If a timely request for an administrative appeal is received by the DAL, the center will be allowed to continue to operate and provide services until the DAL issues a final administrative decision.

F. Administrative Appeals of Immediate License Revocations or License Non-renewals

1. If DHH imposes an immediate license revocation or license non-renewal, DHH may enforce the revocation or non-renewal during the appeal process.

2. If DHH chooses to enforce the revocation or non-renewal during the appeal process, the center will not be allowed to operate and/or provide services during the appeal process.

G. If a licensed CRC has a pending license revocation, and the center's license is due for annual renewal, the department shall deny the license renewal application. The denial of the license renewal application does not affect, in any manner, the license revocation.

H. Administrative Hearings of License Denials, Non-renewals and Revocations

1. If a timely administrative appeal is submitted by the center, the DAL shall conduct the hearing within 90 days of the docketing of the administrative appeal. The DAL may grant one extension, not to exceed 90 days, if good cause is shown.

2. If the final DAL decision is to reverse the license denial, license non-renewal or license revocation, the center's license will be re-instated upon the payment of any outstanding fees or sanctions fees due to the department.

3. If the final DAL decision is to affirm the license non-renewal or license revocation, the center shall:

- a. discharge and transition any and all clients receiving services according to the provisions of this Chapter; and
- b. comply with the requirements governing cessation of business in this Chapter.

I. There is no right to an administrative reconsideration or an administrative appeal of the issuance of a provisional initial license to a new CRC, or the issuance of a provisional license to a licensed CRC.

J. Administrative Reconsiderations and Administrative Appeals of the Expiration of a Provisional Initial License or Provisional License

1. A CRC with a provisional initial license, or a provisional license that expires due to deficiencies cited at the follow-up survey, has the right to request an administrative reconsideration and/or an administrative appeal.

2. The center's request for an administrative reconsideration must:

- a. be in writing;
- b. be received by the HSS within five days of receipt of the notice of the results of the follow-up survey from the department; and
- c. include the basis and specific reasons for the administrative reconsideration.

3. Correction of a violation or deficiency after the follow-up survey will not be considered as the basis for the administrative reconsideration or for the administrative appeal.

4. The issue to be decided in the administrative reconsideration and the administrative appeal is whether the deficiencies were properly cited at the follow-up survey.

5. The CRC's request for an administrative appeal must:

- a. be in writing;
- b. be submitted to the DAL within 15 days of receipt of the notice of the results of the follow-up survey from the department; and
- c. include the basis and specific reasons for the appeal.

6. A center with a provisional initial license or a provisional license that expires under the provisions of this Chapter shall cease providing services and discharge or transition clients unless the DAL or successor entity issues a stay of the expiration.

a. To request a stay, the center must submit its written application to the DAL at the time the administrative appeal is filed.

b. The DAL shall hold a contradictory hearing on the stay application. If the center shows that there is no potential harm to the center's clients, then the DAL shall grant the stay.

#### 7. Administrative Hearing

a. If the CRC submits a timely request for an administrative hearing, the DAL shall conduct the hearing within 90 days of docketing the administrative appeal. The DAL may grant one extension, not to exceed 90 days, if good cause is shown.

b. If the final DAL decision is to remove all deficiencies, the department will reinstate the center's license upon the payment of any outstanding fees and settlement of any outstanding sanctions due to the department.

c. If the final DAL decision is to uphold the deficiencies and affirm the expiration of the provisional license, the center shall discharge any and all clients receiving services in accordance with the provisions of this chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

### Subchapter C. Organization and Administration

#### §5337. General Provisions

A. Purpose and Organizational Structure. The CRC shall develop and implement a statement maintained by the center that clearly defines the purpose of the CRC. The statement shall include:

1. the program philosophy;
2. the program goals and objectives;
3. the ages, sex and characteristics of clients accepted for care;
4. the geographical area served;
5. the types of services provided;
6. the admission criteria;
7. the needs, problems, situations or patterns addressed by the provider's program; and
8. an organizational chart of the provider which clearly delineates the lines of authority.

B. The CRC shall provide supervision and services that:

1. conform to the department's rules and regulations;
2. meet the needs of the client as identified and addressed in the client's treatment plan;
3. protect each client's rights; and
4. promote the social, physical and mental well-being of clients.

C. The CRC shall maintain any information or documentation related to compliance with this Chapter and shall make such information or documentation available to the department.

D. Required Reporting. The center shall report the following incidents in writing to HSS within 24 hours of discovery:

1. any disaster or emergency or other unexpected event that causes significant disruption to program operations;
2. any death or serious injury of a client:
  - a. that may potentially be related to program activities; or

b. who at the time of his/her death or serious injury was an active client of the center; and

3. allegations of client abuse, neglect and exploitation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

#### §5339. Governing Body

A. A crisis receiving center shall have the following:

1. an identifiable governing body with responsibility for and authority over the policies and operations of the center;

2. documents identifying the governing body's:

- a. members;
- b. contact information for each member;
- c. terms of membership;
- d. officers; and
- e. terms of office for each officer.

B. The governing body of a CRC shall:

1. be comprised of one or more persons;
2. hold formal meetings at least twice a year;
3. maintain written minutes of all formal meetings of the governing body; and
4. maintain by-laws specifying frequency of meetings and quorum requirements.

C. The responsibilities of a CRC's governing body include, but are not limited to:

1. ensuring the center's compliance with all federal, state, local and municipal laws and regulations as applicable;
2. maintaining funding and fiscal resources to ensure the provision of services and compliance with this Chapter;
3. reviewing and approving the center's annual budget;
4. designating qualified persons to act as CRC manager, clinical director and nurse manager, and delegating these persons the authority to manage the center;
5. at least once a year, formulating and reviewing, in consultation with the CRC manager, clinical director and nurse manager, written policies concerning:
  - a. the provider's philosophy and goals;
  - b. current services;
  - c. personnel practices and job descriptions; and
  - d. fiscal management;
6. evaluating the performances of the CRC manager, clinical director and nurse manager at least once a year;
7. meeting with designated representatives of the department whenever required to do so;
8. informing the department, or its designee, prior to initiating any substantial changes in the services provided by the center; and

9. ensuring statewide criminal background checks are conducted as required in this Chapter and state law.

D. A governing body shall ensure that the CRC maintains the following documents:

1. minutes of formal meetings and by-laws of the governing body;
2. documentation of the center's authority to operate under state law;
3. all leases, contracts and purchases-of-service agreements to which the center is a party;
4. insurance policies;

5. annual operating budgets;
6. a master list of all the community resources used by the center;
7. documentation of ownership of the center;
8. documentation of all accidents, incidents, abuse/neglect allegations; and
9. a daily census log of clients receiving services.

E. The governing body of a CRC shall ensure the following with regards to contract agreements to provide services for the center.

1. The agreement for services is in writing.
2. Every written agreement is reviewed at least once a year.
3. The deliverables are being provided as per the agreement.
4. The center retains full responsibility for all services provided by the agreement.
5. All services provided by the agreement shall:
  - a. meet the requirements of all laws, rules and regulations applicable to a CRC; and
  - b. be provided only by qualified providers and personnel in accordance with this Chapter.
6. If the agreement is for the provision of direct care services, the written agreement specifies the party responsible for screening, orientation, ongoing training and development of and supervision of the personnel providing services pursuant to the agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

**§5341. Policies and Procedures**

A. Each CRC shall develop, implement and comply with center-specific written policies and procedures governing all requirements of this Chapter, including the following areas:

1. protection of the health, safety, and wellbeing of each client;
2. providing treatment in order for clients to achieve optimal stabilization;
3. access to care that is medically necessary;
4. uniform screening for patient placement and quality assessment, diagnosis, evaluation, and referral to appropriate level of care;
5. operational capability and compliance;
6. delivery of services that are cost-effective and in conformity with current standards of practice;
7. confidentiality and security of client records and files;
8. prohibition of illegal or coercive inducement, solicitation and kickbacks;
9. client rights;
10. grievance process;
11. emergency preparedness;
12. abuse and neglect;
13. incidents and accidents, including medical emergencies;
14. universal precautions;
15. documentation of services;
16. admission, including descriptions of screening and assessment procedures;
17. transfer and discharge procedures;
18. behavior management;
19. infection control;

20. transportation;
21. quality assurance;
22. medical and nursing services;
23. emergency care;
24. photography and video of clients; and
25. contraband.

B. A center shall develop, implement and comply with written personnel policies in the following areas:

1. recruitment, screening, orientation, ongoing training, development, supervision and performance evaluation of staff including volunteers;
2. written job descriptions for each staff position, including volunteers;
3. conducting staff health assessments that are consistent with OPH guidelines and indicate whether, when and how staff have a health assessment;
4. an employee grievance procedure;
5. abuse reporting procedures that require:
  - a. staff to report any allegations of abuse or mistreatment of clients pursuant to state and federal law; and
  - b. staff to report any allegations of abuse, neglect, exploitation or misappropriation of a client to DHH;
6. a non-discrimination policy;
7. a policy that requires all employees to report any signs or symptoms of a communicable disease or personal illness to their supervisor, CRC manager or clinical director as soon as possible to prevent the spread of disease or illness to other individuals;
8. procedures to ensure that only qualified personnel are providing care within the scope of the center's services;
9. policies governing staff conduct and procedures for reporting violations of laws, rules, and professional and ethical codes of conduct;
10. policies governing staff organization that pertain to the center's purpose, setting and location;
11. procedures to ensure that the staff's credentials are verified, legal and from accredited institutions; and
12. obtaining criminal background checks.

C. A CRC shall comply with all federal and state laws, rules and regulations in the implementation of its policies and procedures.

D. Center Rules

1. A CRC shall:
  - a. have a clearly written list of rules governing client conduct in the center;
  - b. provide a copy of the center's rules to all clients and, where appropriate, the client's parent(s) or legal guardian(s) upon admission; and
  - c. post the rules in an accessible location in the center.

E. The facility shall develop, implement and comply with policies and procedures that:

1. give consideration to the client's chronological and developmental age, diagnosis, and severity of illness when assigning a sleeping area or bedroom;
2. ensure that each client has his/her own bed; and
3. prohibit mobile homes from being used as client sleeping areas.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

## Subchapter D. Provider Operations

### §5347. Client Records

A. The CRC shall ensure:

1. a single client record is maintained for each client according to current professional standards;
2. policies and procedures regarding confidentiality of records, maintenance, safeguarding and storage of records are developed, implemented and followed;
3. safeguards are in place to prevent unauthorized access, loss, and destruction of client records;
4. when electronic health records are used, the most up to date technologies and practices are used to prevent unauthorized access;
5. records are kept confidential according to federal and state laws and regulations;
6. records are maintained at the center where the client is currently active and for six months after discharge;
7. six months post-discharge, records may be transferred to a centralized location for maintenance;
8. client records are directly and readily accessible to the clinical staff caring for the client;
9. a system of identification and filing is maintained to facilitate the prompt location of the client's record;
10. all record entries are dated, legible and authenticated by the staff person providing the treatment, as appropriate to the media;
11. records are disposed of in a manner that protects client confidentiality;
12. a procedure for modifying a client record in accordance with accepted standards of practice is developed, implemented and followed;
13. an employee is designated as responsible for the client records;
14. disclosures are made in accordance with applicable state and federal laws and regulations; and
15. client records are maintained at least six years from discharge.

B. Record Contents. The center shall ensure that client records, at a minimum, contain the following:

1. the treatment provided to the client;
2. the client's response to the treatment;
3. other information, including:
  - a. all screenings and assessments;
  - b. provisional diagnoses;
  - c. referral information;
  - d. client information/data such as name, race, sex, birth date, address, telephone number, social security number, school/employer, and next of kin/emergency contact;
  - e. documentation of incidents that occurred;
  - f. attendance/participation in services/activities;
  - g. treatment plan that includes the initial treatment plan plus any updates or revisions;
  - h. lab work (diagnostic laboratory and other pertinent information, when indicated);
  - i. documentation of the services received prior to admission to the CRC as available;
  - j. consent forms;
  - k. physicians' orders;
  - l. records of all medicines administered, including medication types, dosages, frequency of administration, the

individual who administered each dose and response to medication given on an as needed basis;

- m. discharge summary;
  - n. other pertinent information related to client as appropriate; and
4. legible progress notes that are documented in accordance with professional standards of practice and:
    - a. document implementation of the treatment plan and results;
    - b. document the client's level of participation; and
    - c. are completed upon delivery of services by the direct care staff to document progress toward stated treatment plan goals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

### §5349. Client Funds and Possessions

A. The CRC shall:

1. maintain and safeguard all possessions, including money, brought to the center by clients;
2. maintain an inventory of each client's possessions from the date of admission; and
3. return all possessions to the client upon the client's discharge.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

### §5351. Quality Improvement Plan

A. A CRC shall have a quality improvement (QI) plan that:

1. assures that the overall function of the center is in compliance with federal, state, and local laws;
2. is meeting the needs of the citizens of the area;
3. is attaining the goals and objectives established in the center's mission statement;
4. maintains systems to effectively identify issues that require quality monitoring, remediation and improvement activities;
5. improves individual outcomes and individual satisfaction;
6. includes plans of action to correct identified issues that:
  - a. monitor the effects of implemented changes; and
  - b. result in revisions to the action plan;
7. is updated on an ongoing basis to reflect changes, corrections and other modifications.

B. The QI plan shall include:

1. a sample review of client case records on a quarterly basis to ensure that:
  - a. individual treatment plans are up to date;
  - b. records are accurate, complete and current; and
  - c. the treatment plans have been developed and implemented as ordered;
2. a process for identifying on a quarterly basis the risk factors that affect or may affect the health, safety and/or welfare of the clients that includes, but is not limited to:
  - a. review and resolution of grievances;
  - b. incidents resulting in harm to client or elopement;

- c. allegations of abuse, neglect and exploitation; and
- d. seclusion and restraint;
- 3. a process to correct problems identified and track improvements; and
- 4. a process of improvement to identify or trigger further opportunities for improvement.

C. The QI plan shall establish and implement an internal evaluation procedure to:

- 1. collect necessary data to formulate a plan; and
- 2. hold quarterly staff committee meetings comprised of at least three staff members, one of whom is the CRC manager, nurse manager or clinical director, who evaluate the QI process and activities on an ongoing basis.

D. The CRC shall maintain documentation of the most recent 12 months of the QI activity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

**Subchapter E. Personnel**

**§5357. General Requirements**

A. The CRC shall maintain an organized professional staff who is accountable to the governing body for the overall responsibility of:

- 1. the quality of all clinical care provided to clients;
- 2. the ethical conduct and professional practices of its members;
- 3. compliance with policies and procedures approved by the governing body; and
- 4. the documented staff organization that pertains to the center's setting and location.

B. The direct care staff of a CRC shall:

- 1. have the appropriate qualifications to provide the services required by its clients' treatment plans; and
- 2. not practice beyond the scope of his/her license, certification or training.

C. The CRC shall ensure that:

- 1. qualified direct care staff members are present with the clients as necessary to ensure the health, safety and well-being of clients;
- 2. staff coverage is maintained in consideration of:
  - a. acuity of the clients being serviced;
  - b. the time of day;
  - c. the size, location, physical environment and nature of the center;
  - d. the ages and needs of the clients; and
  - e. ensuring the continual safety, protection, direct care and supervision of clients;
- 3. all direct care staff have current certification in cardiopulmonary resuscitation; and
- 4. applicable staffing requirements in this Chapter are maintained.

D. Criminal Background Checks

1. For any CRC that is treating minors, the center shall obtain a criminal background check on all staff. The background check must be conducted within 90 days prior to hire or employment in the manner required by R.S. 15:587.1.

2. For any CRC that is treating adults, the center shall obtain a statewide criminal background check on all

unlicensed direct care staff by an agency authorized by the Office of State Police to conduct criminal background checks. The background check must be conducted within 90 days prior to hire or employment.

3. A CRC that hires a contractor to perform work which does not involve any contact with clients is not required to conduct a criminal background check on the contractor if accompanied at all times by a staff person when clients are present in the center.

E. The CRC shall review the Louisiana state nurse aide registry and the Louisiana direct service worker registry to ensure that each unlicensed direct care staff member does not have a negative finding on either registry.

F. Prohibitions

1. The center providing services to minors is prohibited from knowingly employing or contracting with, or retaining the employment of or contract with, a person who supervises minors or provides direct care to minors who:

- a. has entered a plea of guilty or nolo contendere, no contest, or has been convicted of a felony involving:
  - i. violence, abuse or neglect against a person;
  - ii. possession, sale, or distribution of illegal drugs;
  - iii. sexual misconduct and/or any crimes that requires the person to register pursuant to the Sex Offenders Registration Act;
  - iv. misappropriation of property belonging to another person; or
  - v. a crime of violence;
- b. has a finding placed on the Louisiana state nurse aide registry or the Louisiana direct service worker registry.

2. The center providing services to adults is prohibited from knowingly employing or contracting with, or retaining the employment of or contract with, a member of the direct care staff who:

- a. has entered a plea of guilty or nolo contendere, no contest, or has been convicted of a felony involving:
  - i. abuse or neglect of a person;
  - ii. possession, sale, or distribution of a controlled dangerous substance:
    - (a) within the last five years; or
    - (b) when the employee/contractor is under the supervision of the Louisiana Department of Public Safety and Corrections, the U.S. Department of Probation and Parole or the U.S. Department of Justice;
  - iii. sexual misconduct and/or any crimes that requires the person to register pursuant to the Sex Offenders Registration Act;
  - iv. misappropriation of property belonging to another person;
    - (a) within the last five years; or
    - (b) when the employee is under the supervision of the Louisiana Department of Public Safety and Corrections, the U.S. Department of Probation and Parole or the U.S. Department of Justice; or
  - v. a crime of violence;
- b. has a finding placed on the Louisiana state nurse aide registry or the Louisiana direct service worker registry.

### G. Orientation and In-Service Training

1. All staff shall receive orientation prior to providing services and/or working in the center.
2. All direct care staff shall receive orientation, at least 40 hours of which is in crisis services and intervention training.
3. All direct care staff and other appropriate personnel shall receive in-service training at least once a year, at least twelve hours of which is in crisis services and intervention training.
4. All staff shall receive in-service training according to center policy at least once a year and as deemed necessary depending on the needs of the clients.
5. The content of the orientation and in-service training shall include the following:
  - a. confidentiality;
  - b. grievance process;
  - c. fire and disaster plans;
  - d. emergency medical procedures;
  - e. organizational structure and reporting relationships;
  - f. program philosophy;
  - g. personnel policies and procedures;
  - h. detecting and mandatory reporting of client abuse, neglect or misappropriation;
  - i. an overview of mental health and substance abuse, including an overview of behavioral health settings and levels of care;
  - j. detecting signs of illness or dysfunction that warrant medical or nursing intervention;
  - k. side effects and adverse reactions commonly caused by psychotropic medications;
  - l. basic skills required to meet the health needs and challenges of the client;
  - m. components of a crisis cycle;
  - n. recognizing the signs of anxiety and escalating behavior;
  - o. crisis intervention and the use of non-physical intervention skills, such as de-escalation, mediation conflict resolution, active listening and verbal and observational methods to prevent emergency safety situations;
  - p. therapeutic communication;
  - q. client's rights;
  - r. duties and responsibilities of each employee;
  - s. standards of conduct required by the center including professional boundaries;
  - t. information on the disease process and expected behaviors of clients;
  - u. levels of observation;
  - v. maintaining a clean, healthy and safe environment and a safe and therapeutic milieu;
  - w. infectious diseases and universal precautions;
  - x. overview of the Louisiana licensing standards for crisis receiving centers;
  - y. basic emergency care for accidents and emergencies until emergency medical personnel can arrive at center; and
  - z. regulations, standards and policies related to seclusion and restraint, including the safe application of physical and mechanical restraints and physical assessment of the restrained client.

6. The in-services shall serve as a refresher for subjects covered in orientation.

7. The orientation and in-service training shall:

- a. be provided only by staff who are qualified by education, training, and experience;
- b. include training exercises in which direct care staff members successfully demonstrate in practice the techniques they have learned for managing the delivery of patient care services; and
- c. require the direct care staff member to demonstrate competency before providing services to clients.

### H. Staff Evaluation

1. The center shall complete an annual performance evaluation of all employees.

2. The center's performance evaluation procedures for employees who provide direct care to clients shall address the quality and nature of the employee's relationships with clients.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

### §5359. Personnel Qualifications and Responsibilities

A. A CRC shall have the following minimum staff:

1. a CRC manager who:
  - a. has a minimum of a master's degree in a human services field or is a licensed registered nurse;
  - b. has at least one year of qualifying experience in the field of behavioral health;
  - c. is a full time employee; and
  - d. has the following assigned responsibilities:
    - i. supervise and manage the day-to-day operation of the CRC;
    - ii. review reports of all accidents/incidents occurring on the premises and identify hazards to the clinical director;
    - iii. participate in the development of new programs and modifications;
    - iv. perform programmatic duties and/or make clinical decisions only within the scope of his/her licensure; and
    - v. shall not have other job responsibilities that impede the ability to maintain the administration and operation of the CRC;
2. a clinical director who is:
  - a. a physician licensed in the state of Louisiana with expertise in managing psychiatric and medical conditions in accordance with the LSBME; or
  - b. a psychiatric and mental health nurse practitioner who has an unrestricted license and prescriptive authority and a licensed physician on call at all times to be available for consultation;
  - c. responsible for developing and implementing policies and procedures and oversees clinical services and treatment;
  - d. on duty as needed and on call and available at all times;
3. a nurse manager who:
  - a. holds a current unrestricted license as a registered nurse (RN) in the state of Louisiana;
  - b. shall be a full time employee;

- c. has been a RN for a minimum of five years;
- d. has three years of qualifying experience providing direct care to patients with behavioral health diagnoses and at least one year qualifying experience providing direct care to medical/surgical inpatients;
- e. has the following responsibilities:
  - i. develop and ensure implementation of nursing policies and procedures;
  - ii. provide oversight of nursing staff and the services they provide;
  - iii. ensure that any other job responsibilities will not impede the ability to provide oversight of nursing services;
- 4. authorized licensed prescriber who:
  - a. shall be either:
    - i. a physician licensed in the state of Louisiana with expertise in managing psychiatric and medical conditions in accordance with the LSBME; or
    - ii. a psychiatric and mental health nurse practitioner who has an unrestricted license and prescriptive authority and a licensed physician on call at all times to be available for consultation;
  - b. is on call at all times;
  - c. is responsible for managing the psychiatric and medical care of the clients;
- 5. licensed mental health professionals (LMHPs):
  - a. the center shall maintain a sufficient number of LMHPs to meet the needs of its clients;
  - b. there shall be at least one LMHP on duty during hours of operation;
  - c. the LMHP shall have one year of qualifying experience in direct care to clients with behavioral health diagnoses and shall have the following responsibilities:
    - i. provide direct care to clients and may serve as primary counselor to specified caseload;
    - ii. serve as a resource person for other professionals and unlicensed personnel in their specific area of expertise;
    - iii. attend and participate in individual care conferences, treatment planning activities, and discharge planning; and
    - iv. function as the client's advocate in all treatment decisions.
- 6. nurses:
  - a. the center shall maintain licensed nursing staff to meet the needs of its clients;
  - b. all nurses shall have:
    - i. a current nursing license from the state of Louisiana;
    - ii. at least one year qualifying experience in providing direct care to clients with a behavioral health diagnosis; and
    - iii. at least one year qualifying experience providing direct care to medical/surgical inpatients;
  - c. the nursing staff has the following responsibilities:
    - i. provide nursing services in accordance with accepted standards of practice, the CRC policies and the individual treatment plans of the clients;
    - ii. supervise non-licensed clinical personnel;
    - iii. each CRC shall have at least one RN on duty at the CRC during hours of operation; and

iv. as part of orientation, all nurses shall receive 24 hours of education focusing on psychotropic medications, their side effects and possible adverse reactions. All nurses shall receive training in psychopharmacology for at least four hours per year.

B. Optional Staff

- 1. The CRC shall maintain non-licensed clinical staff as needed who shall:
    - a. be at least 18 years of age;
    - b. have a high school diploma or GED;
    - c. provide services in accordance with CRC policies, documented education, training and experience, and the individual treatment plans of the clients; and
    - d. be supervised by the nursing staff.
  - 2. Volunteers
    - a. The CRC that utilizes volunteers shall ensure that each volunteer:
      - i. meets the requirements of non-licensed clinical staff;
      - ii. is screened and supervised to protect clients and staff;
      - iii. is oriented to facility, job duties, and other pertinent information;
      - iv. is trained to meet requirements of duties assigned;
      - v. is given a written job description or written agreement;
      - vi. is identified as a volunteer;
      - vii. is trained in privacy measures; and
      - viii. is required to sign a written confidentiality agreement.
    - b. The facility shall designate a volunteer coordinator who:
      - i. has the experience and training to supervise the volunteers and their activities; and
      - ii. is responsible for selecting, evaluating and supervising the volunteers and their activities.
  - 3. If a CRC utilizes student interns, it shall ensure that each student intern:
    - a. has current registration with the appropriate Louisiana board when required or educational institution, and is in good standing at all times;
    - b. provides direct client care utilizing the standards developed by the professional board;
    - c. provides care only under the direct supervision of an individual authorized in accordance with acceptable standards of practice; and
    - d. provides only those services for which the student has been properly trained and deemed competent to perform.
- AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.
- HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:
- §5361. Personnel Records**
- A. A CRC shall maintain a personnel file for each employee and direct care staff member in the center. Each record shall contain:
    - 1. the application for employment and/or resume, including contact information and employment history for the preceding five years, if applicable;

2. reference letters from former employer(s) and personal references or written documentation based on telephone contact with such references;
3. any required medical examinations or health screens;
4. evidence of current applicable professional credentials/certifications according to state law or regulations;
5. annual performance evaluations to include evidence of competency in performing assigned tasks;
6. personnel actions, other appropriate materials, reports and notes relating to the individual's employment;
7. the staff member's starting and termination dates;
8. proof of orientation, training and in-services;
9. results of criminal background checks, if required;
10. job descriptions and performance expectations;
11. a signed attestation annually by each member of the direct care staff indicating that he/she has not been convicted of or pled guilty or nolo contendere to a crime, other than traffic violations; and
12. written confidentiality agreement signed by the personnel every twelve months.

B. A CRC shall retain personnel files for at least three years following termination of employment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39: Subchapter F. Admission, Transfer and Discharge

#### **§5367. Admission Requirements**

A. A CRC shall not refuse admission to any individual on the grounds of race, national origin, ethnicity or disability.

B. A CRC shall admit only those individuals whose needs, pursuant to the screening, can be fully met by the center.

C. A CRC shall expect to receive individuals who present voluntarily to the unit and/or individuals who are brought to the unit under an OPC, CEC, or PEC.

D. The CRC shall develop and implement policies and procedures for diverting individuals when the CRC is at capacity, that shall include:

1. notifying emergency medical services (EMS), police and the OBH or its designee in the service area;
2. conducting a screening on each individual that presents to the center; and
3. safely transferring the presenting individual to an appropriate provider;

#### **E. Pre-Admission Requirements**

1. Prior to admission, the center shall attempt to obtain documentation from the referring emergency room, agency, facility or other source, if available, that reflects the client's condition.

2. The CRC shall conduct a screening on each individual that presents for treatment that:

- a. is performed by a RN who may be assisted by other personnel;
- b. is conducted within 15 minutes of entering the center;
- c. determines eligibility and appropriateness for admission;
- d. assesses whether the client is an imminent danger to self or others; and

- e. includes the following:
  - i. taking vital signs;
  - ii. breath analysis and urine drug screen
  - iii. brief medical history including assessment of risk for imminent withdrawal; and
  - iv. clinical assessment of current condition to determine primary medical problem(s) and appropriateness of admission to CRC or transfer to other medical provider;

#### **F. Admission Requirements**

1. The CRC shall establish the CRC's admission requirements that include:

- a. availability of appropriate physical accommodations;
- b. legal authority or voluntary admission; and
- c. written documentation that client and/or family if applicable, consents to treatment.

2. The CRC shall develop, implement and comply with admission criteria that, at a minimum, include the following inclusionary and exclusionary requirements:

a. inclusionary—the client is experiencing a seriously acute psychological/emotional change which results in a marked increase in personal distress and exceeds the abilities and resources of those involved to effectively resolve it;

b. exclusionary—the client is experiencing an exacerbation of a chronic condition that does not meet the inclusionary criteria listed in §5367.F.2.a.

3. If the client qualifies for admission into the CRC, the center shall ensure that a behavioral health assessment is conducted:

- a. by a LMHP;
- b. within 4 hours of being received in the unit unless extenuating or emergency circumstances preclude the delivery of this service within this time frame; and
- c. includes the following:

i. a history of previous emotional, behavioral and substance use problems and treatment;

ii. a social assessment to include a determination of the need for participation of family members or significant others in the individual's treatment; the social, peer-group, and environmental setting from which the person comes; family circumstances; current living situation; employment history; social, ethnic, cultural factors; and childhood history; current or pending legal issues including charges, pending trial, etc.;

iii. an assessment of the individual's ability and willingness to cooperate with treatment;

iv. an assessment for any possible abuse or neglect; and

v. review of any laboratory results, results of breath analysis and urine drug screens on patients and the need for further medical testing.

4. The CRC shall ensure that a nursing assessment is conducted that is:

- a. begun at time of admission and completed within 24 hours; and
- b. conducted by a RN with the assistance of other personnel.

5. The center shall ensure that a physical assessment is conducted by an authorized licensed prescriber within 12 hours of admission that includes:

- a. a complete medical history;

- b. direct physical examination; and
  - c. documentation of medical problems.
6. The authorized license prescriber, LMHP and/or RN shall conduct a review of the medical and psychiatric records of current and past diagnoses, laboratory results, treatments, medications and dose response, side-effects and compliance with:

- a. the review of data reported to clinical director;
- b. synthesis of data received is incorporated into treatment plan by clinical director;

G. Client/Family Orientation. Upon admission or as soon as possible, each facility shall ensure that a confidential and efficient orientation is provided to the client and the client's designated representative, if applicable, concerning:

- 1. visitation;
- 2. physical layout of the center;
- 3. safety;
- 4. center rules; and
- 5. all other pertinent information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

### **§5369. Discharge, Transfer and Referral Requirements**

A. The CRC shall develop, implement and comply with policies and procedures that address when and how clients will be discharged and referred or transferred to other providers in accordance with applicable state and federal laws and regulations.

B. Discharge planning shall begin upon admission.

C. The CRC shall ensure that a client is discharged:

- 1. when the client's treatment goals are achieved, as documented in the client's treatment plan;
- 2. when the client's issues or treatment needs are not consistent with the services the center is authorized or able to provide; or
- 3. according to the center's established written discharge criteria.

D. Discharge Plan. Each CRC client shall have a written discharge plan to provide continuity of services that includes:

- 1. the client's transfer or referral to outside resources, continuing care appointments, and crisis intervention assistance;
- 2. documented attempts to involve the client and the family or an alternate support system in the discharge planning process;
- 3. the client's goals or activities to sustain recovery;
- 4. signature of the client or, if applicable, the client's parent or guardian, with a copy provided to the individual who signed the plan;
- 5. name, dosage and frequency of client's medications ordered at the time of discharge;
- 6. prescriptions for medications ordered at time of discharge; and
- 7. the disposition of the client's possessions, funds and/or medications, if applicable.

E. The discharge summary shall be completed within 30 days and include:

- 1. the client's presenting needs and issues identified at the time of admission;

- 2. the services provided to the client;
- 3. the center's assessment of the client's progress towards goals;
- 4. the circumstances of discharge; and
- 5. the continuity of care recommended following discharge, supporting documentation and referral information.

F. Transfer Process. The CRC responsible for the discharge and transfer of the client shall:

- 1. request and receive approval from the receiving facility prior to transfer;
- 2. notify the receiving facility prior to the arrival of the client of any significant medical/psychiatric conditions/complications or any other pertinent information that will be needed to care for the client prior to arrival; and
- 3. transfer all requested client information and documents upon request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

## **Subchapter G. Program Operations**

### **§5375. Treatment Services**

A. A CRC shall:

- 1. operate 24 hours per day seven days a week;
- 2. operate up to 16 licensed beds;
- 3. provide services to either adults or minors but not both;
- 4. provide services that include, but are not limited to:
  - a. emergency screening;
  - b. assessment;
  - c. crisis intervention and stabilization;
  - d. 24 hour observation;
  - e. medication administration; and
  - f. referral to the most appropriate and least restrictive setting available consistent with the client's needs.

B. A CRC shall admit clients for an estimated length of stay of 3-7 days. If a greater length of stay is needed, the CRC shall maintain documentation of clinical justification for the extended stay.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

### **§5377. Laboratory Services**

A. The CRC shall have laboratory services available to meet the needs of its clients, including the ability to:

- 1. obtain STAT laboratory results as needed at all times;
- 2. conduct a dipstick urine drug screen; and
- 3. conduct a breath analysis for immediate determination of blood alcohol level.

B. The CRC shall maintain a CLIA certificate for the laboratory services provided on-site.

C. The CRC shall ensure that all contracted laboratory services are provided by a CLIA clinical laboratory improvement amendment (CLIA) certified laboratory.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

**§5379. Pharmaceutical Services and Medication Administration**

A. The CRC may provide pharmaceutical services on-site at the center or off-site pursuant to a written agreement with a pharmaceutical provider.

B. All compounding, packaging, and dispensing of medications shall be accomplished in accordance with Louisiana law and Board of Pharmacy regulations and be performed by or under the direct supervision of a registered pharmacist currently licensed to practice in Louisiana.

C. The CRC shall ensure that a mechanism exists to:

1. provide pharmaceutical services 24 hours per day; and
2. obtain STAT medications, as needed, within an acceptable time frame, at all times.

D. CRCs that utilize off-site pharmaceutical providers pursuant to a written agreement shall have:

1. a physician who assumes the responsibility of procurement and possession of medications; and
2. an area for the secure storage of medication and medication preparation in accordance with Louisiana Board of Pharmacy rules and regulations.

E. A CRC shall maintain:

1. a site-specific Louisiana controlled substance license in accordance with the Louisiana Uniform Controlled Dangerous Substance Act; and
2. a United States Drug Enforcement Administration controlled substance registration for the facility in accordance with title 21 of the *United States Code*.

F. The CRC shall develop, implement and comply with written policies and procedures that govern:

1. the safe administration and handling of all prescription and non-prescription medications;
2. the storage, recording and control of all medications;
3. the disposal of all discontinued and/or expired medications and containers with worn, illegible or missing labels;
4. the use of prescription medications including:
  - a. when medication is administered, medical monitoring occurs to identify specific target symptoms;
  - b. a procedure to inform clients, staff, and where appropriate, client's parent(s), legal guardian(s) or designated representatives, of each medication's anticipated results, the potential benefits and side-effects as well as the potential adverse reaction that could result from not taking the medication as prescribed;
  - c. involving clients and, where appropriate, their parent(s) or legal guardian(s), and designated representatives in decisions concerning medication; and
  - d. staff training to ensure the recognition of the potential side effects of the medication;
5. the list of abbreviations and symbols approved for use in the facility;
6. recording of medication errors and adverse drug reactions and reporting them to the client's physician or authorized prescriber, and the nurse manager;
7. the reporting of and steps to be taken to resolve discrepancies in inventory, misuse and abuse of controlled substances in accordance with federal and state law;
8. provision for emergency pharmaceutical services;
9. a unit dose system; and

10. procuring and the acceptable timeframes for procuring STAT medications when the medication needed is not available on-site.

G. The CRC shall ensure that:

1. medications are administered by licensed health care personnel whose scope of practice includes administration of medications;
  2. any medication is administered according to the order of an authorized licensed prescriber;
  3. it maintains a list of authorized licensed prescribers that is accessible to staff at all times.
  4. all medications are kept in a locked illuminated clean cabinet, closet or room at temperature controls according to the manufacturer's recommendations, accessible only to individuals authorized to administer medications;
  5. medications are administered only upon receipt of written orders, electromechanical facsimile, or verbal orders from an authorized licensed prescriber;
  6. all verbal orders are signed by the licensed prescriber within 72 hours;
  7. medications that require refrigeration are stored in a refrigerator or refrigeration unit separate from the refrigerators or refrigeration units that store food, beverages, or laboratory specimens;
  8. all prescription medication containers are labeled to identify:
    - a. the client's full name;
    - b. the name of the medication;
    - c. dosage;
    - d. quantity and date dispensed;
    - e. directions for taking the medication;
    - f. required accessory and cautionary statements;
    - g. prescriber's name; and
    - h. the expiration date;
  9. Medication errors, adverse drug reactions, and interactions with other medications, food or beverages taken by the client are immediately reported to the client's physician or authorized licensed prescriber, supervising pharmacist and nurse manager with an entry in the client's record;
  10. all controlled substances shall be kept in a locked cabinet or compartment separate from other medications;
  11. current and accurate records are maintained on the receipt and disposition of controlled substances;
  12. controlled substances are reconciled:
    - a. at least twice a day by staff authorized to administer controlled substances; or
    - b. by an automated system that provides reconciliation;
  13. discrepancies in inventory of controlled substances are reported to the nurse manager and the supervising pharmacist.
- AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.
- HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

**§5381. Transportation**

A. The CRC shall establish, implement and comply with policies and procedures to:

1. secure emergency transportation in the event of a client's medical emergency; and

2. provide non-emergent medical transportation to the clients as needed.

B. The facility shall have a written agreement with a transportation service in order to provide non-emergent transport services needed by its clients that shall require all vehicles used to transport CRC clients are:

1. maintained in a safe condition;
2. properly licensed and inspected in accordance with state law;
3. operated at a temperature that does not compromise the health, safety and needs of the client;
4. operated in conformity with all applicable motor vehicle laws;
5. current liability coverage for all vehicles used to transport clients;
6. all drivers of vehicles that transport CRC clients are properly licensed to operate the class of vehicle in accordance with state law; and
7. the ability to transport non-ambulatory clients in appropriate vehicles if needed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

### **§5383. Food and Diet**

A. The CRC shall ensure that:

1. all dietary services are provided under the direction of a Louisiana licensed and registered dietician either directly or by written agreement;
2. menus are approved by the registered dietician;
3. meals are of sufficient quantity and quality to meet the nutritional needs of clients, including religious and dietary restrictions;
4. meals are in accordance with Federal Drug Administration (FDA) dietary guidelines and the orders of the authorized licensed prescriber;
5. at least three meals plus an evening snack are provided daily with no more than 14 hours between any two meals;
6. meals are served in a manner that maintains the safety and security of the client and are free of identified contraband;
7. all food is stored, prepared, distributed, and served under safe and sanitary conditions;
8. all equipment and utensils used in the preparation and serving of food are properly cleaned, sanitized and stored; and
9. if meals are prepared on-site, they are prepared in an OPH approved kitchen.

B. The CRC may provide meal service and preparation pursuant to a written agreement with an outside food management company. If provided pursuant to a written agreement, the CRC shall:

1. maintain responsibility for ensuring compliance with this Chapter;
2. provide written notice to HSS and OPH within 10 calendar days of the effective date of the contract;
3. ensure that the outside food management company possesses a valid OPH retail food permit and meets all requirements for operating a retail food establishment that serves a highly susceptible population, in accordance with the special requirements for highly susceptible populations as promulgated in the Louisiana Sanitary Code provisions

governing food display and service for retail food establishments (specifically LAC 51:XXIII.1911 as amended May 2007); and

4. ensure that the food management company employs or contracts with a licensed and registered dietician who serves the center as needed to ensure that the nutritional needs of the clients are met in accordance with the authorized licensed prescriber's orders and acceptable standards of practice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

### **Subchapter H. Client Rights**

#### **§5389. General Provisions**

A. The CRC shall develop, implement and comply with policies and procedures that:

1. protect its clients' rights;
2. respond to questions and grievances pertaining to these rights;
3. ensure compliance with clients' rights enumerated in R.S. 28:171; and
4. ensure compliance with minors' rights enumerated in the Louisiana Children's Code.

B. A CRC's client and, if applicable, the client's parent(s) or legal guardian or chosen designated representative, have the following rights:

1. to be informed of the client's rights and responsibilities at the time of or shortly after admission;
2. to have a family member, chosen representative and/or his or her own physician notified of admission at the client's request to the CRC;
3. to receive treatment and medical services without discrimination based on race, age, religion, national origin, gender, sexual orientation, disability, marital status, diagnosis, ability to pay or source of payment;
4. to be free from abuse, neglect, exploitation and harassment;
5. to receive care in a safe setting;
6. to receive the services of a translator or interpreter, if applicable, to facilitate communication between the client and the staff;
7. to be informed of the client's own health status and to participate in the development, implementation and updating of the client's treatment plan;
8. to make informed decisions regarding the client's care in accordance with federal and state laws and regulations;
9. to consult freely and privately with the client's legal counsel or to contact an attorney at any reasonable time;
10. to be informed, in writing, of the policies and procedures for initiation, review and resolution of grievances or client complaints;
11. to submit complaints or grievances without fear of reprisal;
12. to have the client's information and medical records, including all computerized medical information, kept confidential in accordance with federal and state statutes and rules/regulations;
13. to be provided indoor and/or outdoor recreational and leisure opportunities;
14. to be given a copy of the center's rules and regulations upon admission or shortly thereafter;

15. to receive treatment in the least restrictive environment that meets the client's needs;

16. to be subject to the use of restraint and/or seclusion only in accordance with federal and state law, rules and regulations;

17. to be informed of all estimated charges and any limitations on the length of services at the time of admission or shortly thereafter;

18. to contact DHH at any reasonable time;

19. to obtain a copy of these rights as well as the address and phone number of DHH and the Mental Health Advocacy Service at any time; and

20. to be provided with personal hygiene products, including but not limited to, shampoo, deodorant, toothbrush, toothpaste, and soap, if needed.

C. A copy of the clients' right shall be posted in the facility and accessible to all clients.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

### §5391. Grievances

A. The facility shall develop, implement and comply with a written grievance procedure for clients designed to allow clients to submit a grievance without fear of retaliation. The procedure shall include, but not be limited to:

1. process for filing a grievance;
2. a time line for responding to the grievance;
3. a method for responding to a grievance; and
4. the staff responsibilities for addressing and resolving grievances.

B. The facility shall ensure that:

1. the client and, if applicable, the client's parent(s) or legal guardian(s), is aware of and understands the grievance procedure; and

2. all grievances are addressed and resolved to the best of the center's ability.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

## Subchapter I. Physical Environment

### §5397. Interior Space

A. The CRC shall:

1. have a physical environment that protects the health, safety and security of the clients;

2. have routine maintenance and cleaning programs in all areas of the center;

3. be well-lit, clean, and ventilated;

4. conduct a risk assessment of each client and the physical environment of the facility in order to ensure the safety and well-being of all clients admitted to the facility;

5. maintain its physical environment, including, but not limited to, all equipment, fixtures, plumbing, electrical, and furnishings, in good order and safe condition in accordance with manufacturer's recommendations;

6. maintain heating, ventilation and cooling systems in good order and safe condition to ensure a comfortable environment; and

7. ensure that electric receptacles in client care areas are tamper-resistant or equipped with ground fault circuit interrupters.

B. Common Area. The CRC shall have designated space:

1. to be used for group meetings, dining, visitation, leisure and recreational activities;

2. that is at least 25 square feet per client and no less than 150 square feet exclusive of sleeping areas, bathrooms, areas restricted to staff and office areas; and

3. that contains tables for eating meals.

C. Bathrooms

1. Each bathroom to be used by clients shall contain:

a. a lavatory with:

i. paper towels or an automatic dryer;

ii. a soap dispenser with soap for individual use;

and

iii. a wash basin with hot and cold running water;

b. tubs and/or showers that:

i. have hot and cold water;

ii. have slip proof surfaces; and

iii. allow for individual privacy;

c. toilets:

i. an adequate supply of toilet paper;

ii. with seats; and

iii. that allow for individual privacy;

d. at least one sink, one tub or shower and one toilet for every eight clients;

e. shatterproof mirrors secured to the walls at convenient heights;

f. plumbing, piping, ductwork, and that are recessed or enclosed in order to be inaccessible to clients; and

g. other furnishings necessary to meet the clients' basic hygienic needs.

2. A CRC shall have at least one separate toilet and lavatory facility for the staff.

D. Sleeping Areas and Bedrooms

1. A CRC that utilizes a sleeping area for multiple clients shall ensure that its sleeping area:

a. is at least 60 square feet per bed of clear floor area; and

b. does not contain bunk beds.

2. Bedrooms. A CRC shall ensure that each bedroom:

a. accommodates no more than one client; and

b. is at least 80 square feet of clear floor area.

3. The CRC that utilizes a sleeping area for multiple clients shall maintain at least one bedroom.

4. The CRC shall ensure that each client:

a. has sufficient separate storage space for clothing, toilet articles and other personal belongings of clients;

b. has sheets, pillow, bedspread, towels, washcloths and blankets that are:

i. intact and in good repair;

ii. systematically removed from use when no longer usable;

iii. clean;

iv. provided as needed or when requested unless the request is unreasonable;

c. is given a bed for individual use that:

i. is no less than 30 inches wide;

ii. is of solid construction;

iii. has a clean, comfortable, impermeable, nontoxic and fire retardant mattress; and

iv. is appropriate to the size and age of the client.

#### E. Administrative and Staff Areas

1. The CRC shall maintain a space that is distinct from the client common areas that serves as an office for administrative functions.

2. The CRC shall have a designated space for nurses and other staff to complete tasks, be accessible to clients and to observe and monitor client activity within the unit.

#### F. Counseling and Treatment Area

1. The CRC shall have a designated space to allow for private physical examination that is exclusive of sleeping area and common space.

2. The CRC shall have a designated space to allow for private and small group discussions and counseling sessions between individual clients and staff that is exclusive of sleeping areas and common space.

3. The CRC may utilize the same space for the counseling area and examination area.

#### G. Seclusion Room

1. The CRC shall have at least one seclusion room that:

- a. is for no more than one client; and
- b. allows for continual visual observation and monitoring of the client either:
  - i. directly; or
  - ii. by a combination of video and audio;
- c. has a monolithic ceiling;
- d. is a minimum of 80 square feet; and
- e. contains a stationary restraint bed that is secure to the floor;
- f. flat walls that are free of any protrusions with angles;
- g. does not contain electrical receptacles;

#### H. Kitchen

1. If a CRC prepares meals on-site, the CRC shall have a full service kitchen that:

- a. includes a cooktop, oven, refrigerator, freezer, hand washing station, storage and space for meal preparation;
- b. complies with OPH regulations;
- c. has the equipment necessary for the preparation, serving, storage and clean-up of all meals regularly served to all of the clients and staff;
- d. contains trash containers covered and made of metal or United Laboratories-approved plastic; and
- e. maintains the sanitation of dishes.

2. A CRC that does not provide a full service kitchen accessible to staff 24 hours per day shall have a nourishment station or a kitchenette, restricted to staff only, in which staff may prepare nourishments for clients, that includes:

- a. a sink;
- b. a work counter;
- c. a refrigerator;
- d. storage cabinets;
- e. equipment for preparing hot and cold nourishments between scheduled meals; and
- f. space for trays and dishes used for non-scheduled meal service.

3. A CRC may utilize ice making equipment if the ice maker:

- a. is self-dispensing; or
- b. is in an area restricted to staff only.

#### I. Laundry

1. The CRC shall have an automatic washer and dryer for use by staff when laundering clients' clothing.

2. The CRC shall have:

- a. provisions to clean and launder soiled linen, other than client clothing, either on-site or off-site by written agreement;
- b. a separate area for holding soiled linen until it is laundered; and
- c. a clean linen storage area.

#### J. Storage:

1. the CRC shall have separate and secure storage areas that are inaccessible to clients for the following:

- a. client possessions that may not be accessed during their stay;
  - b. hazardous, flammable and/or combustible materials; and
2. records and other confidential information.

#### K. Furnishings

1. The CRC shall ensure that its furnishings are:
- a. designed to suit the size, age and functional status of the clients;
  - b. in good repair;
  - c. clean;
  - d. promptly repaired or replaced if defective, run-down or broken.

#### L. Hardware, Fixtures and Other Protrusions

1. If grab bars are used, the CRC shall ensure that the space between the bar and the wall shall be filled to prevent a cord from being tied around it.

2. All hardware as well as sprinkler heads, lighting fixtures and other protrusions shall be:

- a. recessed or of a design to prohibit client access; and
- b. tamper-resistant.

3. Towel bars, shower curtain rods, clothing rods and hooks are prohibited.

#### M. Ceilings

1. The CRC shall ensure that the ceiling is:

- a. no less than 7.5 feet high and secured from access; or

- b. at least 9 feet in height; and
- c. all overhead plumbing, piping, duct work or other potentially hazardous elements shall be concealed above the ceiling.

#### N. Doors and Windows

1. All windows shall be fabricated with laminated safety glass or protected by polycarbonate, laminate or safety screens.

2. Door hinges shall be designed to minimize points for hanging.

3. Except for specifically designed antiligature hardware, door handles shall point downward in the latched or unlatched position.

4. All hardware shall have tamper-resistant fasteners.

5. The center shall ensure that outside doors, windows and other features of the structure necessary for safety and comfort of individuals:

- a. are secured for safety;
- b. prohibit clients from gaining unauthorized egress;

- c. prohibit an outside from gaining unauthorized ingress;
- d. if in disrepair, not accessible to clients until repaired; and
- e. repaired as soon as possible.

6. The facility shall ensure that all closets, bedrooms and bathrooms for clients that are equipped with doors do not have locks and can be readily opened from both sides.

O. Smoking

1. The CRC shall prohibit smoking in the interior of the center.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

**§5399. Exterior Space Requirements**

A. The CRC shall maintain all exterior areas to prevent elopement, injury, suicide and the introduction of contraband, and shall maintain a perimeter security system designed to monitor and control visitor access and client egress.

B. The facility shall maintain all exterior areas and structures of the facility in good repair and free from any reasonably foreseeable hazard to health or safety.

C. The facility shall ensure the following:

- 1. garbage stored outside is secured in non-combustible, covered containers and are removed on a regular basis;
- 2. trash collection receptacles and incinerators are separate from any area accessible to clients and located as to avoid being a nuisance;
- 3. unsafe areas, including steep grades, open pits, swimming pools, high voltage boosters or high speed roads are fenced or have natural barriers to protect clients;
- 4. fences that are in place are in good repair;
- 5. exterior areas are well lit; and
- 6. the facility has appropriate signage that:
  - a. is visible to the public;
  - b. indicates the facility's legal or trade name;
  - c. clearly states that the CRC provides behavioral health services only; and
  - d. indicates the center is not hospital or emergency room.

D. A CRC with an outdoor area to be utilized by its clients shall ensure that the area is safe and secure from access and egress.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

**Chapter 54. Crisis Receiving Centers**

**Subchapter J. Safety and Emergency Preparedness**

**§5401. General Safety Provisions**

A. The CRC shall provide additional supervision when necessary to provide for the safety of all clients.

B. The CRC shall:

- 1. prohibit weapons of any kind on-site;
- 2. prohibit glass, hand sanitizer, plastic bags in client-care areas;
- 3. ensure that all poisonous, toxic and flammable materials are:
  - a. maintained in appropriate containers and labeled as to the contents;

- b. securely stored in a locked cabinet or closet;
- c. are used in such a manner as to ensure the safety of clients, staff and visitors; and
- d. maintained only as necessary;

4. ensure that all equipment, furnishing and any other items that are in a state of disrepair are removed and inaccessible to clients until replaced or repaired; and

5. ensure that when potentially harmful materials such as cleaning solvents and/or detergents are used, training is provided to the staff and they are used by staff members only.

C. The CRC shall ensure that a first aid kit is available in the facility and in all vehicles used to transport clients.

D. The CRC shall simulate fire drills and other emergency drills at least once a quarter while maintaining client safety and security during the drills.

E. Required Inspections. The CRC shall pass all required inspections and keep a current file of reports and other documentation needed to demonstrate compliance with applicable laws and regulations.

F. The CRC shall have an on-going safety program to include:

- 1. continuous inspection of the facility for possible hazards;
- 2. continuous monitoring of safety equipment and maintenance or repair when needed;
- 3. investigation and documentation of all accidents or emergencies; and
- 4. fire control, evacuation planning and other emergency drills.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

**§5403. Infection Control**

A. The CRC shall provide a sanitary environment to avoid sources and transmission of infections and communicable diseases.

B. The CRC shall have an active Infection Control Program that requires:

- 1. reporting of infectious disease in accordance with OPH guidelines;
- 2. monitoring of:
  - a. the spread of infectious disease;
  - b. hand washing;
  - c. staff and client education; and
  - d. incidents of specific infections in accordance with OPH guidelines;
- 3. corrective actions;
- 4. a designated infection control coordinator who:
  - a. has education and/or experience in infection control;
  - b. develops and implements policies and procedures governing the infection control program;
  - c. takes universal precautions; and
  - d. strictly adheres to all sanitation requirements.
- 5. The CRC shall maintain a clean and sanitary environment and shall ensure that:
  - a. supplies and equipment are available to staff;
  - b. there is consistent and constant monitoring and cleaning of all areas of the facility;

c. the methods used for cleaning, sanitizing, handling and storing of all supplies and equipment prevent the transmission of infection;

d. directions are posted for sanitizing both kitchen and bathroom and laundry areas;

e. showers and bathtubs are to be sanitized by staff between client usage;

f. clothing belonging to clients must be washed and dried separately from the clothing belonging to other clients; and

g. laundry facilities are used by staff only;

h. food and waste are stored, handled, and removed in a way that will not spread disease, cause odor, or provide a breeding place for pests.

C. The CRC may enter into a written contract for housekeeping services necessary to maintain a clean and neat environment.

D. Each CRC shall have an effective pest control plan.

E. After discharge of a client, the CRC shall:

1. clean the bed, mattress, cover, bedside furniture and equipment;

2. ensure that mattresses, blankets and pillows assigned to clients are intact and in a sanitary condition; and

3. ensure that the mattress, blankets and pillows used for a client are properly sanitized before assigned to another client.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

#### **§5405. Emergency Preparedness**

A. The CRC shall have a written emergency preparedness plan to:

1. maintain continuity of the center's operations in preparation for, during and after an emergency or disaster; and

2. manage the consequences of all disasters or emergencies that disrupt the center's ability to render care and treatment, or threaten the lives or safety of the clients.

B. The CRC shall:

1. post exit diagrams describing how to clear the building safely and in a timely manner;

2. have a clearly labeled and legible master floor plan(s) that indicates:

a. the areas in the facility that are to be used by clients as shelter or safe zones during emergencies;

b. the location of emergency power outlets and whether they are powered;

c. the locations of posted, accessible, emergency information; and

d. what will be powered by emergency generator(s), if applicable;

3. train its employees in emergency or disaster preparedness. Training shall include orientation, ongoing training and participation in planned drills for all personnel.

C. The CRC's emergency preparedness plan shall include the following information, at a minimum.

1. If the center evacuates, the plan shall include:

a. provisions for the evacuation of each client and delivery of essential services to each client;

b. the center's method of notifying the client's family or caregiver, if applicable, including:

i. the date and approximate time that the facility or client is evacuating;

ii. the place or location to which the client(s) is evacuating which includes the name, address and telephone number; and

iii. a telephone number that the family or responsible representative may call for information regarding the client's evacuation;

c. provisions for ensuring that supplies, medications, clothing and a copy of the treatment plan are sent with the client, if the client is evacuated;

d. the procedure or methods that will be used to ensure that identification accompanies the client including:

i. current and active diagnosis;

ii. medication, including dosage and times administered;

iii. allergies;

iv. special dietary needs or restrictions; and

v. next of kin, including contact information if applicable;

e. transportation or arrangements for transportation for an evacuation.

2. Provisions for staff to maintain continuity of care during an emergency as well as for distribution and assignment of responsibilities and functions.

3. The delivery of essential care and services to clients who are housed in the facility or by the facility at another location, during an emergency or disaster.

4. The determination as to when the facility will shelter in place and when the facility will evacuate for a disaster or emergency and the conditions that guide these determinations in accordance with local or parish OSHEP.

5. If the center shelters in place, provisions for seven days of necessary supplies to be provided by the center prior to the emergency, including drinking water or fluids and non-perishable food.

D. The center shall:

1. follow and execute its emergency preparedness plan in the event of the occurrence of a declared disaster or other emergency;

2. if the state, parish or local OHSEP orders a mandatory evacuation of the parish or the area in which the agency is serving, shall ensure that all clients are evacuated according to the facility's emergency preparedness plan;

3. not abandon a client during a disaster or emergency;

4. review and update its emergency preparedness plan at least once a year;

5. cooperate with the department and with the local or parish OHSEP in the event of an emergency or disaster and shall provide information as requested;

6. monitor weather warnings and watches as well as evacuation order from local and state emergency preparedness officials;

7. upon request by the department, submit a copy of its emergency preparedness plan for review;

8. upon request by the department, submit a written summary attesting to how the plan was followed and executed to include, at a minimum:

a. pertinent plan provisions and how the plan was followed and executed;

b. plan provisions that were not followed;

- c. reasons and mitigating circumstances for failure to follow and execute certain plan provisions;
- d. contingency arrangements made for those plan provisions not followed; and
- e. a list of all injuries and deaths of clients that occurred during execution of the plan, evacuation or temporary relocation including the date, time, causes and circumstances of the injuries and deaths.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

**§5407. Inactivation of License due to a Declared Disaster or Emergency**

A. A CRC located in a parish which is the subject of an executive order or proclamation of emergency or disaster issued in accordance with R.S. 29:724 or R.S. 29:766, may seek to inactivate its license for a period not to exceed one year, provided that the center:

1. submits written notification to HSS within 60 days of the date of the executive order or proclamation of emergency or disaster that:
  - a. the CRC has experienced an interruption in the provisions of services as a result of events that are the subject of such executive order or proclamation of emergency or disaster issued in accordance with R.S. 29:724 or R.S. 29:766;
  - b. the CRC intends to resume operation as a CRC in the same service area;
  - c. includes an attestation that the emergency or disaster is the sole casual factor in the interruption of the provision of services;
  - d. includes an attestation that all clients have been properly discharged or transferred to another facility; and
  - e. lists the clients and the location of the discharged or transferred clients;
2. resumes operating as a CRC in the same service area within one year of the issuance of an executive order or proclamation of emergency or disaster in accordance with R.S. 29:724 or R.S. 29:766;
3. continues to pay all fees and cost due and owed to the department including, but not limited to, annual licensing fees and outstanding civil fines; and
4. continues to submit required documentation and information to the department.

B. Upon receiving a completed request to inactivate a CRC license, the department shall issue a notice of inactivation of license to the CRC.

C. In order to obtain license reinstatement, a CRC with a department-issued notice of inactivation of license shall:

1. submit a written license reinstatement request to HSS 60 days prior to the anticipated date of reopening that includes:
  - a. the anticipated date of opening, and a request to schedule a licensing survey;
  - b. a completed licensing application and other required documents with licensing fees, if applicable; and
  - c. written approvals for occupancy from OSFM and OPH.

D. Upon receiving a completed written request to reinstate a CRC license and other required documentation, the department shall conduct a licensing survey.

E. If the CRC meets the requirements for licensure and the requirements under this subsection, the department shall issue a notice of reinstatement of the center's license.

F. During the period of inactivation, the department prohibits:

1. a change of ownership (CHOW) in the CRC; and
2. an increase in the licensed capacity from the CRC's licensed capacity at the time of the request to inactivate the license.

G. The provisions of this Section shall not apply to a CRC which has voluntarily surrendered its license.

H. Failure to comply with any of the provisions of this Section shall be deemed a voluntary surrender of the CRC license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert  
Secretary

1311#063

**DECLARATION OF EMERGENCY**  
**Department of Health and Hospitals**  
**Bureau of Health Services Financing**

Disproportionate Share Hospital Payments  
(LAC 50.V.2501, 2701, 2705 and 2707)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50.V.2501, 2701, 2705, and 2707 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the provisions governing disproportionate share hospital (DSH) payments to revise the provisions governing non-rural community hospitals and federally mandated statutory hospitals to clarify that hospitals qualifying as a non-rural community hospital in state fiscal year 2007-08 may also qualify in the federally mandated statutory hospital category, and to revise the definition of a non-rural community hospital (*Louisiana Register*; Volume 34, Number 11). In compliance with Act 228 of the 2009 Regular Session of the

Louisiana Legislature, the department promulgated an Emergency Rule which amended the provisions governing disproportionate share hospital payments to reallocate any remaining funds from the fiscal year 2009 DSH appropriation to non-rural community hospitals and issue a supplemental payment to these hospitals for their uncompensated care costs (*Louisiana Register*, Volume 35, Number 7).

Act 10 of the 2009 Regular Session of the Louisiana Legislature directed the department to amend the DSH qualifying criteria and payment methodologies for non-rural community hospitals. In compliance with Act 10, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions of the June 26, 2009 Emergency Rule governing supplemental DSH payments to non-rural community hospitals (*Louisiana Register*, Volume 36, Number 1). The department promulgated an Emergency Rule which amended the January 20, 2010 Emergency Rule to amend the provisions governing supplemental DSH payments to non-rural community hospitals in order to redistribute the funds allocated for the state fiscal year 2010 DSH appropriation (*Louisiana Register*, Volume 36, Number 7).

The department promulgated an Emergency Rule which amended the June 29, 2010 Emergency Rule to revise the provisions governing DSH payments to allow for additional payments after completion of the Centers for Medicare and Medicaid Services' mandated independent audit for the state fiscal year (*Louisiana Register*, Volume 37, Number 6). Due to a budgetary shortfall in state fiscal year 2013, the department promulgated an Emergency Rule which amended the provisions governing DSH payments to non-rural community hospitals to eliminate the community hospital psychiatric DSH pool (*Louisiana Register*, Volume 39, Number 1).

This Emergency Rule is being promulgated to amend the provisions of the June 20, 2011 Emergency Rule in order to revise the formatting as a result of the promulgation of the February 1, 2013 Emergency Rule governing non-rural community hospitals. This action is being taken to promote the public health and welfare of uninsured individuals and to ensure their continued access to health care by assuring that hospitals are adequately reimbursed for furnishing uncompensated care.

Effective November 20, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the June 20, 2011 Emergency Rule governing DSH payments.

## **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part V. Medical Assistance Program—Hospital Services**

##### **Subpart 3. Disproportionate Share Hospital Payments**

#### **Chapter 25. Disproportionate Share Hospital Payment Methodologies**

##### **§2501. General Provisions**

A. - B.3. ...

4. Qualification is based on the hospital's latest filed cost report and related uncompensated cost data as required by the Department. Qualification for small rural hospitals is

based on the latest filed cost report. Hospitals must file cost reports in accordance with Medicare deadlines, including extensions. Hospitals that fail to timely file Medicare cost reports and related uncompensated cost data will be assumed to be ineligible for disproportionate share payments. Only hospitals that return timely disproportionate share qualification documentation will be considered for disproportionate share payments. After the final payment during the state fiscal year has been issued, no adjustment will be given on DSH payments with the exception of public state-operated hospitals, even if subsequently submitted documentation demonstrates an increase in uncompensated care costs for the qualifying hospital. After completion of a Center for Medicare and Medicaid Services' (CMS) mandated independent audit for the state fiscal year, additional payments may occur subject to the conditions specified in §2705.D.2 and §2707.B. For hospitals with distinct part psychiatric units, qualification is based on the entire hospital's utilization.

B.5. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:654 (April 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:65 (January 2010), amended LR 36:512 (March 2010), LR 39:

#### **Chapter 27. Qualifying Hospitals**

##### **§2701. Non-Rural Community Hospitals**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:655 (April 2008), amended LR 34:2402 (November 2008), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

##### **§2705. Small Rural Hospitals**

A. - D.1.b. ...

2. Additional payments shall only be made after finalization of the CMS mandated DSH audit for the state fiscal year. Payments shall be limited to the aggregate amount recouped from small rural hospitals based on these reported audit results. If the small rural hospitals' aggregate amount of underpayments reported per the audit results exceeds the aggregate amount overpaid, the payment redistribution to underpaid shall be paid on a pro rata basis calculated using each hospital's amount underpaid divided by the sum of underpayments for all small rural hospitals.

E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:657 (April 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

##### **§2707. Public State-Operated Hospitals**

A. ...

B. DSH payments to individual public state-owned or operated hospitals shall be up to 100 percent of the hospital's

net uncompensated costs. Final payment shall be made in accordance with final uncompensated care costs as calculated per the CMS mandated audit for the state fiscal year.

C. - D.2.d. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:658 (April 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to all inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert  
Secretary

1311#058

## **DECLARATION OF EMERGENCY**

### **Department of Health and Hospitals Bureau of Health Services Financing**

#### **Early and Periodic Screening, Diagnosis and Treatment Dental Program Reimbursement Rate Reduction (LAC 50:XV.6905)**

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XV.6905 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 14 of the 2013 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures remain at the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

As a result of a budgetary shortfall in state fiscal year 2013, the Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for dental services in the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program to reduce the reimbursement rates (*Louisiana Register*, Volume 39, Number 4).

Due to a budgetary shortfall in state fiscal year 2014, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for EPSDT dental services to reduce the reimbursement rates (*Louisiana Register*, Volume 39, Number 8). This Emergency Rule is being promulgated to continue the

provisions of the August 1, 2013 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective November 30, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for EPSDT dental services to reduce the reimbursement rates.

## **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part XV. Services for Special Populations**

#### **Subpart 5. Early and Periodic Screening, Diagnosis and Treatment**

#### **Chapter 69. Dental Services**

#### **§6905. Reimbursement**

A. - J. ...

K. Effective for dates of service on or after August 1, 2013, the reimbursement fees for EPSDT dental services shall be reduced by 1.5 percent of the rate on file July 31, 2013, unless otherwise stated in this Chapter.

1. The following services shall be excluded from the August 1, 2013 rate reduction:

- a. removable prosthodontics; and
- b. orthodontic services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:1138 (June 2007), amended LR 34:1032 (June 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1890 (September 2009), amended LR 36:2040 (September 2010), LR 37:1598 (June 2011), LR 39:1048 (April 2013), LR 39:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert  
Secretary

1311#064

## **DECLARATION OF EMERGENCY**

### **Department of Health and Hospitals Bureau of Health Services Financing and**

#### **Office for Citizens with Developmental Disabilities**

#### **Home and Community-Based Services Waivers Children's Choice Allocation of Waiver Opportunities (LAC 50:XXI.11107)**

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amend LAC 50:XXI.11107 in

the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities adopted provisions in the Children's Choice Waiver for the allocation of additional waiver opportunities for the Money Follows the Person Rebalancing Demonstration Program (*Louisiana Register*, Volume 35, Number 9). The department promulgated an Emergency Rule which amended the provisions of the Children's Choice Waiver to provide for the allocation of waiver opportunities for children who have been identified by the Office for Citizens with Developmental Disabilities regional offices and human services authorities and districts as meeting state-funded family support criteria for priority level 1 and 2, and needing more family support services than what is currently available through state-funded family support services (*Louisiana Register*, Volume 36, Number 9).

The department promulgated an Emergency Rule which amended the provisions of the September 20, 2010 Emergency Rule in order to correct a formatting error within the Section (*Louisiana Register*, Volume 39, Number 4). This Emergency Rule is being promulgated to continue the provisions of the April 20, 2013 Emergency Rule. This action is being taken to secure enhanced federal funding, and to ensure that these provisions are promulgated in a clear and concise manner.

Effective December 18, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amend the provisions governing the allocation of opportunities in the Children's Choice Waiver.

#### **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

## **Part XXI. Home and Community-Based Services**

### **Waivers**

#### **Subpart 9. Children's Choice**

### **Chapter 111. General Provisions**

#### **§11107. Allocation of Waiver Opportunities**

A. The order of entry in the Children's Choice Waiver is first come, first served from a statewide list arranged by date of application for the Developmental Disabilities Request for Services Registry for the New Opportunities Waiver. Families shall be given a choice of accepting an opportunity in the Children's Choice Waiver or remaining on the DDRFSR for the NOW.

1. The only exceptions to the first come, first served allocation of waiver opportunities shall be for the:

a. Money Follows the Person Rebalancing Demonstration waiver opportunities which are allocated to demonstration participants only; and

b. waiver opportunities which are allocated to children who have been determined to need more services than what is currently available through state funded family support services.

B. - B.1.b. ...

C. Four hundred twenty-five opportunities shall be designated for qualifying children with developmental disabilities that have been identified by the Office for Citizens with Developmental Disabilities (OCDD) regional offices and human services authorities and districts as needing more family support services than what is currently available through state funded family support services.

1. To qualify for these waiver opportunities, children must:

a. be under 18 years of age;

b. be designated by the OCDD regional office, human services authority or district as meeting priority level 1 or 2 criteria;

c. be Medicaid eligible;

d. be eligible for state developmental disability services; and

e. meet the ICF/DD level of care.

2. Each OCDD regional office and human services authority or district shall be responsible for the prioritization of these opportunities. Priority levels shall be defined according to the following criteria:

a. Priority Level 1. Without the requested supports, there is an immediate or potential threat of out-of-home placement or homelessness due to:

i. the individual's medical care needs;

ii. documented abuse or neglect of the individual;

iii. the individual's intense or frequent challenging behavioral needs; or

iv. death or inability of the caregiver to continue care due to their own age or health; or

v. the possibility that the individual may experience a health crisis leading to death, hospitalization or placement in a nursing facility.

b. Priority Level 2. Supports are needed to prevent the individual's health from deteriorating or the individual from losing any of their independence or productivity.

3. Children who qualify for one of these waiver opportunities are not required to have a protected request date on the Developmental Disabilities Request for Services Registry.

4. Each OCDD regional office, human services authority and district shall have a specific number of these opportunities designated to them for allocation to waiver recipients.

5. In the event one of these opportunities is vacated, the opportunity shall be returned to the allocated pool for that particular OCDD regional office, human services authority or district for another opportunity to be offered.

6. Once all of these opportunities are filled, supports and services, based on the priority determination system, will be identified and addressed through other resources currently available for individuals with developmental disabilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 35:1892 (September 2009), amended LR 39:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert  
Secretary

1311#065

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Bureau of Health Services Financing

Hospice Services  
(LAC 50:XV.Chapters 33-43)

The Department of Health and Hospitals, Bureau of Health Services Financing, amends LAC 50:XV.Chapters 33-43 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

As a result of a budgetary shortfall in state fiscal year 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for hospice services provided to long-term care residents to reduce the reimbursement rates (*Louisiana Register*, Volume 35, Number 9).

The Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing hospice services in order to bring these provisions into compliance with the requirements of the Patient Protection and Affordable Care Act (PPACA) and also amended the provisions governing prior authorization for hospice services in order to control the escalating costs associated with the Hospice Program (*Louisiana Register*, Volume 38, Number 3). The department promulgated a Notice of Intent which further revised and clarified the provisions governing hospice services (*Louisiana Register*, Volume 39, Number 11). The department now proposes to amend the provisions of the May 1, 2012 Emergency Rule to incorporate the revisions made in the Notice of Intent and to revise the formatting of these provisions in order to ensure that the provisions are promulgated in a clear and concise manner. This action is being taken to avoid sanctions from the U.S. Department of Health and Human Services, Centers for Medicare and

Medicaid Services for noncompliance with PPACA requirements, and to avoid a budget deficit in the medical assistance programs.

Effective November 20, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the May 1, 2012 Emergency Rule governing the hospice services.

## Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part XV. Services for Special Populations

##### Subpart 3. Hospice

#### Chapter 33. Provider Participation

##### §3301. Conditions for Participation

###### A. Statutory Compliance

1. Coverage of Medicaid hospice care shall be in accordance with:

a. 42 USC 1396d(o); and

b. the Medicare Hospice Program guidelines as set forth in 42 CFR Part 418.

###### B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1466 (June 2002), amended LR 30:1024 (May 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

#### Chapter 35. Recipient Eligibility

##### §3501. Election of Hospice Care

###### A. - F. ...

G. Election Statement Requirements. The election statement must include:

1. ...

2. the individual's or his/her legal representative's acknowledgment that he or she has been given a full understanding of the palliative rather than curative nature of hospice care, as it relates to the individual's terminal illness;

3. - 4. ...

5. the signature of the individual or his/her legal representative.

H. Duration of Election. An election to receive hospice care will be considered to continue through the initial election period and through the subsequent election periods without a break in care as long as the individual:

1. remains in the care of a hospice;

2. does not revoke the election under the provisions of §3505; and

3. is not discharged from hospice in accordance with §3505.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 19:749 (June 1993), amended LR 28:1466 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

##### §3503. Waiver of Payment for Other Services

A. Individuals who are 21 and over and approved to receive hospice may not receive any other services that are related to the treatment of the terminal condition or that are

equivalent to hospice care. The hospice provider must provide services to the individual that are comparable to the services they received through Medicaid prior to their election of hospice. These services include, but are not limited to:

1. pharmaceutical and biological services;
2. durable medical equipment; and
- a. - c. Repealed.
3. any other services permitted by federal law.

4. The services listed in §3503.A.1-3 are for illustrative purposes only. The hospice provider is not exempt from providing care if an item or category is not listed.

B. Individuals under age 21 who are approved for hospice may continue to receive curative treatments for their terminal illness; however, the hospice provider is responsible to coordinate all curative treatments related to the terminal illness.

1. *Curative Treatments*—medical treatment and therapies provided to a patient with the intent to improve symptoms and cure the patient's medical problem. Antibiotics, chemotherapy, a cast for a broken limb are examples of curative care.

2. Curative care has as its focus the curing of an underlying disease and the provision of medical treatments to prolong or sustain life.

3. Curative care does not include home health services including durable medical equipment, personal care service, extended home health and pediatric day health care. The hospice provider is responsible to provide these services or contract for the performance of these services.

C. The hospice provider is responsible for making a daily visit to all clients under age 21 and for the coordination of care to assure there is no duplication of services. The daily visit is not required if the person is not in the home due to hospitalization or inpatient respite or inpatient hospice stays.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1467 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

### **§3505. Revoking the Election of Hospice Care/Discharge**

A. - A.4.b. ...

5. Re-election of Hospice Benefits. If an election has been revoked in accordance with the provisions of this §3505, the individual or his/her representative may at any time file an election, in accordance with §3501, for any other election period that is still available to the individual.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1467 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

## **Chapter 37. Provider Requirements**

### **§3701. Requirements for Coverage**

A. To be covered, a Certification of Terminal Illness must be completed as set forth in §3703, the election of hospice care form must be completed in accordance with

§3501, and a plan of care must be established in accordance with §3705. A written narrative from the referring physician explaining why the patient has a prognosis of six months or less must be included in the certificate of terminal illness.

B. Prior authorization requirements stated in Chapter 41 of these provisions are applicable to all election periods beyond the initial 90-day period and one subsequent 90-day period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1467 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

### **§3703. Certification of Terminal Illness**

A. ...

1. For the first 90-day period of hospice coverage, the hospice must obtain a written certification no later than two calendar days after hospice care is initiated. If a verbal certification is not obtained within two calendar days following the initiation of hospice care, a written certification must be made within 10 calendar days following the initiation of hospice care. The written certification and notice of election must be obtained before requesting prior authorization for hospice care. If these requirements are not met, no payment is made for the days prior to the certification. Instead, payment begins with the day certification, i.e., the date all certification forms are obtained.

a. - c. Repealed.

2. For the subsequent periods, a written certification must be included in an approved prior authorization packet before a claim may be billed.

2.a. - 4. Repealed.

B. Face-to-Face Encounter

1. A hospice physician or hospice nurse practitioner must have a face-to-face encounter with each hospice patient whose total stay across all hospices is anticipated to reach the third benefit period. The face-to-face encounter must occur no more than 30 calendar days prior to the third benefit period recertification, and every benefit period recertification thereafter, to gather clinical findings to determine continued eligibility for hospice care.

2. The physician or nurse practitioner who performs the face-to-face encounter with the patient must attest in writing that he or she had a face-to-face encounter with the patient, including the date of that visit. The attestation of the nurse practitioner or a non-certifying hospice physician shall state that the clinical findings of that visit were provided to the certifying physician for use in determining continued eligibility for hospice care.

C. Content of Certifications

1. Certifications shall be based on the physician's or medical director's clinical judgment regarding the normal course of the individual's illness.

2. The certification must specify that the individual's prognosis is for a life expectancy of six months or less if the terminal illness runs its normal course.

3. Written clinical information and other documentation that support the medical prognosis must accompany the certification of terminal illness and must be based on the physician's clinical judgment regarding the

normal course of the individual's illness filed in the medical record with the written certification, as set forth in §3703.C.

4. The physician must include a brief written narrative explanation of the clinical findings that support a life expectancy of six months or less as part of the certification and recertification forms.

a. The physician may include an addendum to the certification and recertification forms which shall include, at a minimum:

- i. the patient's name;
- ii. physician's name;
- iii. terminal diagnosis(es);
- iv. prognosis; and
- v. the name and signature of the IDG member

making the referral.

b. The narrative must reflect the patient's individual clinical circumstances and cannot contain check boxes or standard language used for all patients.

c. The narrative associated with the third benefit period recertification and every subsequent recertification must include an explanation of why the clinical findings of the face-to-face encounter support a life expectancy of six months or less, and shall not be the same narrative as previously submitted.

d. prognosis; and

e. the name and signature of the IDG member taking the referral.

5. All certifications and recertifications must be signed and dated by the physician(s), and must include the benefit period dates to which the certification or recertification applies.

#### D. Sources of Certification

1. For the initial 90-day period, the hospice must obtain written certification statements as provided in §3703.A.1 from:

a. the hospice's medical director or physician member of the hospice's interdisciplinary group; and

b. the individual's attending physician.

i. The attending physician is a doctor of medicine or osteopathy and is identified by the individual, at the time he or she elects to receive hospice care, as having the most significant role in the determination and delivery of the individual's medical care.

ii. The attending physician is the physician identified within the Medicaid system as the provider to which claims have been paid for services prior to the time of the election of hospice benefits.

2. For subsequent periods, the only requirement is certification by either the medical director of the hospice or the physician member of the hospice interdisciplinary group.

E. Maintenance of Records. Hospice staff must make an appropriate entry in the patient's clinical record as soon as they receive an oral certification and file written certifications in the clinical record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 19:749 (June 1993), amended LR 28:1468 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

## §3705. Plan of Care

A. - B. ...

C. When developing the plan of care (POC), the hospice provider must consult with, and collaborate with the recipient, his/her caregiver, and his/her long-term personal care services (LT-PCS) provider. If the recipient is receiving LT-PCS at the time of admission to hospice, the hospice provider must ensure that the POC clearly and specifically details the services and tasks, along with the frequency, to be performed by the LT-PCS provider, as well as the services and tasks, along with the frequency, that are to be performed by the hospice provider to ensure that services are non-duplicative and that the recipient's needs are being met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1468 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

### Chapter 39. Covered Services

#### §3901. Medical and Support Services

A. - A.11.b.iv. ...

c. Inpatient Respite Care Day. An inpatient respite care day is a day on which the individual receives care in an approved facility on a short-term basis, not to exceed five days in any one election period, to relieve the family members or other persons caring for the individual at home. An approved facility is one that meets the standards as provided in 42 CFR §418.98(b). This service cannot be delivered to individuals already residing in a nursing facility.

d. General Inpatient Care Day. A general inpatient care day is a day on which an individual receives general inpatient care in an inpatient facility that meets the standards as provided in 42 CFR §418.98(a) and for the purpose of pain control or acute or chronic symptom management which cannot be managed in other settings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1468 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

### Chapter 41. Prior Authorization

#### §4101. Prior Authorization of Hospice Services

A. Prior authorization is required for all election periods as specified in §3501.C of this Subpart. The prognosis of terminal illness will be reviewed. A patient must have a terminal prognosis and not just certification of terminal illness. Authorization will be made on the basis that a patient is terminally ill as defined in federal regulations. These regulations require certification of the patient's prognosis, rather than diagnosis. Authorization will be based on objective clinical evidence contained in the clinical record which supports the medical prognosis that the patient's life expectancy is six months or less if the illness runs its normal course and not simply on the patient's diagnosis.

1. The Medicare criteria found in *Local Coverage Determination (LCD) Hospice Determining Terminal Status (L32015)* will be used in analyzing information provided by the hospice to determine if the patient meets clinical requirements for this program.

2. Providers shall submit the appropriate forms and documentation required for prior authorization of hospice services as designated by the department in the Medicaid Program's service and provider manuals, memorandums, etc.

B. Written Notice of Denial. In the case of a denial, a written notice of denial shall be submitted to the hospice, recipient, and nursing facility, if appropriate.

C. Reconsideration. Claims will only be paid from the date of the Hospice notice of election if the prior authorization request is received within 10 days from the date of election and is approved. If the prior authorization request is received 10 days or more after the date on the Hospice notice of election, the approved begin date for hospice services is the date the completed prior authorization packet is received.

D. Appeals. If the recipient does not agree with the denial of a hospice prior authorization request, the recipient, or the hospice on behalf of the recipient, can request an appeal of the prior authorization decision. The appeal request must be filed with the Division of Administrative Law within 30 days from the date of the postmark on the denial letter. The appeal proceedings will be conducted in accordance with the Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1470 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

#### **Chapter 43. Reimbursement**

#### **§4303. Levels of Care for Payment**

A. - B.3. ...

C. Inpatient Respite Care. The inpatient respite care rate is paid for each day the recipient is in an approved inpatient facility and is receiving respite care (see §3901.A.11.c). Respite care may be provided only on an occasional basis and payment for respite care may be made for a maximum of five days at a time including the date of admission but not counting the date of discharge. Payment for the day of discharge in a respite setting shall be at the routine home level-of-care discharged alive rate.

1. ...

2. Respite care may not be provided when the hospice patient is a nursing home resident, regardless of the setting, i.e., long-term acute care setting.

D. General Inpatient Care. Payment at the inpatient rate is made when an individual receives general inpatient care in an inpatient facility for pain control or acute or chronic symptom management which cannot be managed in other settings. General inpatient care is a short-term level of care and is not intended to be a permanent solution to a negligent or absent caregiver. A lower level of care must be used once symptoms are under control. General inpatient care and nursing facility or intermediate care facility for persons with intellectual disabilities room and board cannot be reimbursed for the same recipient on the same covered days of service. Payment for the day of discharge in a general inpatient setting shall be at the routine home level-of-care discharged alive rate.

1. - 2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1470 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

#### **§4305. Hospice Payment Rates**

A. - A.2. ...

a. The hospice is paid for other physicians' services, such as direct patient care services, furnished to individual patients by hospice employees and for physician services furnished under arrangements made by the hospice unless the patient care services were furnished on a volunteer basis. The physician visit for the face-to-face encounter will not be reimbursed by the Medicaid Program.

b. - d.ii. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1470 (June 2002), LR 34:441 (March 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

#### **§4307. Payment for Long Term Care Residents**

A. ...

1. who is residing in a nursing facility or intermediate care facility for persons with intellectual disabilities (ICF/ID);

2. who would be eligible under the state plan for nursing facility services or ICF/ID services if he or she had not elected to receive hospice care;

3. ...

4. for whom the hospice agency and the nursing facility or ICF/ID have entered into a written agreement in accordance with the provisions set forth in the licensing standards for hospice agencies (LAC 48:I.Chapter 82), under which the hospice agency takes full responsibility for the professional management of the individual's hospice care and the facility agrees to provide room and board to the individual.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 19:749 (June 1993), amended LR 28:1471 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1894 (September 2009), LR 39:

#### **§4309. Limitation on Payments for Inpatient Care**

A. ...

1. During the 12-month period beginning November 1 of each year and ending October 31, the number of inpatient respite care days for any one hospice recipient may not exceed five days per occurrence.

2. - 2.b....

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1472 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O.

Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert  
Secretary

1311#059

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Bureau of Health Services Financing

Inpatient Hospital Services  
Non-Rural, Non-State Hospitals  
Reimbursement Rate Reduction  
(LAC 50:V.953, 955 and 967)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V. 953,955, and 967 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 13 of the 2012 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures remain at the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

As a result of a budgetary shortfall in state fiscal year (SFY) 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for inpatient hospital services to reduce the reimbursement rates for inpatient hospital services rendered by non-rural, non-state hospitals (*Louisiana Register*, Volume 37, Number 7).

In anticipation of a budgetary shortfall in state fiscal year 2013 as a result of the reduction in the state's disaster recovery Federal Medical Assistance Percentage (FMAP) rate, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for inpatient hospital services to reduce the reimbursement rates paid to non-rural, non-state hospitals (*Louisiana Register*, Volume 38, Number 8). This Emergency Rule is being promulgated to continue the provisions of the August 1, 2012 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Taking the proposed per diem rate reduction into consideration, the department has carefully reviewed the proposed rates and is satisfied that they are consistent with efficiency, economy and quality of care and are sufficient to

enlist enough providers so that private (non-state) inpatient hospital services and children's specialty hospital services under the State Plan are available at least to the extent that they are available to the general population in the state.

Effective November 28, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for inpatient hospital services to reduce the reimbursement rates paid to non-rural, non-state hospitals.

## Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part V. Hospital Services

##### Subpart 1. Inpatient Hospital Services

#### Chapter 9. Non-Rural, Non-State Hospitals

##### Subchapter B. Reimbursement Methodology

#### §953. Acute Care Hospitals

A. - Q.1. ...

R. Effective for dates of service on or after August 1, 2012, the inpatient per diem rate paid to acute care hospitals shall be reduced by 3.7 percent of the per diem rate on file as of July 31, 2012.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:876 (May 2008), amended LR 34:877 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1895 (September 2009), LR 36:1552 (July 2010), LR 36:2561 (November, 2010), LR 37:2161 (July 2011), LR 39:

#### §955. Long Term Hospitals

A. - H. ...

I. Effective for dates of service on or after August 1, 2012, the inpatient per diem rate paid to long term hospitals shall be reduced by 3.7 percent of the per diem rate on file as of July 31, 2012.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR: 34:876 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1895 (September 2009), LR 36:1554 (July 2010), LR 36:2562 (November, 2010), LR 37:2162 (July 2011), LR 39:

#### §967. Children's Specialty Hospitals

A. - I. ...

J. Effective for dates of service on or after August 1, 2012, the per diem rates as calculated per §967.A.-C above shall be reduced by 3.7 percent. Final payment shall be the lesser of allowable inpatient acute care and psychiatric costs as determined by the cost report or the Medicaid discharges or days as specified per §967.A-C for the period, multiplied by 85.53 percent of the target rate per discharge or per diem limitation as specified per §967.A-C for the period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2562 (November, 2010), amended LR 37:2162 (July 2011), LR 39:

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O.

Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert  
Secretary

1311#066

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Bureau of Health Services Financing

Inpatient Hospital Services  
Non-Rural, Non-State Hospitals  
Supplemental Payments  
(LAC 50:V.953)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.953 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 14 of the 2013 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures remain at the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

As a result of a budgetary shortfall in state fiscal year (SFY) 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for inpatient hospital services to reduce the reimbursement rates for inpatient hospital services rendered by non-rural, non-state hospitals (*Louisiana Register*, Volume 37, Number 7).

The department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for inpatient hospital services to revise the participation requirements for the Low Income and Needy Care Collaboration (*Louisiana Register*, Volume 37, Number 1). The department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for inpatient hospital services to adjust the reimbursement rates paid for NICU and PICU services rendered by non-rural, non-state hospitals and to revise the outlier payment methodology (*Louisiana Register*, Volume 37, Number 3). The department promulgated an Emergency Rule which amended the March 1, 2011 Emergency Rule governing the reimbursement methodology for inpatient hospital services to revise the formatting of these provisions in order to ensure that the provisions were promulgated in a clear and concise manner (*Louisiana Register*, Volume 38, Number 8).

In anticipation of a budgetary shortfall in state fiscal year 2013 as a result of the reduction in the state's disaster recovery Federal Medical Assistance Percentage (FMAP) rate, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for inpatient hospital services to reduce the reimbursement rates paid to non-rural, non-state hospitals (*Louisiana Register*, Volume 38, Number 8). Due to a continuing budgetary shortfall in SFY 2013, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for inpatient hospital services to further reduce the reimbursement rates paid to non-rural, non-state hospitals (*Louisiana Register*, Volume 39, Number 1).

Due to a continuing budgetary shortfall in SFY 2014, the department has determined that it is necessary to amend the provisions governing the reimbursement methodology for inpatient hospital services to reduce the total supplemental payments pool for non-rural, non-state hospitals and to change the frequency of payments. This action is being taken to avoid a budget deficit in the medical assistance programs. It is estimated that implementation of this Emergency Rule will reduce expenditures in the Medicaid Program by approximately \$3,925,000 for state fiscal year 2013-2014.

Effective November 20, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for inpatient hospital services to reduce the supplemental payments pool for non-rural, non-state hospitals.

#### Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part V. Hospital Services

##### Subpart 1. Inpatient Hospital Services

#### Chapter 9. Non-Rural, Non-State Hospitals

##### Subchapter B. Reimbursement Methodology

#### §503. Acute Care Hospitals

A. - H.2. ...

3. - 5. Reserved.

I. - I.2. ...

3. - 5. Reserved

J. - N.2.b. ...

3. - 6. Reserved.

O. - Q.1. ...

R. - S. Reserved.

T. Effective for dates of service on or after November 20, 2013, supplemental payments to non-rural, non-state acute care hospitals that qualify as a high Medicaid hospital shall be annual. The amount appropriated for annual supplemental payments shall be reduced to \$1,000,000. Each qualifying hospital's annual supplemental payment shall be calculated based on the pro rata share of the reduced appropriation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:876 (May 2008), amended LR 34:877 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1895 (September 2009), LR 35:1896 (September 2009), repromulgated LR 35:2182 (October 2009), amended LR 36:1552 (July 2010), LR 36:2561 (November 2010), LR 37:2161 (July 2011), LR: 39:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert  
Secretary

1311#060

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Bureau of Health Services Financing

Inpatient Hospital Services  
State Hospitals  
Reimbursement Rate Reduction  
(LAC 50:V.551)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V. 551 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 13 of the 2012 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures remain at the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for inpatient hospital services to provide a supplemental Medicaid payment to state-owned acute care hospitals that meet the qualifying criteria, and to adjust the reimbursement paid to non-qualifying state-owned acute care hospitals (*Louisiana Register*, Volume 38, Number 5).

In anticipation of a budgetary shortfall in state fiscal year 2013 as a result of the reduction in the state's disaster recovery Federal Medical Assistance Percentage (FMAP) rate, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for inpatient hospital services to reduce the reimbursement rates paid to state-owned hospitals (*Louisiana Register*, Volume 38, Number 8). This Emergency Rule is being promulgated to continue the

provisions of the August 1, 2012 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective November 28, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for inpatient hospital services to reduce the reimbursement rates paid to state hospitals.

## Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part V. Hospital Services

##### Subpart 1. Inpatient Hospital Services

#### Chapter 5. State Hospitals

##### Subchapter B. Reimbursement Methodology

#### §551. Acute Care Hospitals

A. - D. ...

E. Effective for dates of service on or after August 1, 2012, the inpatient per diem rate paid to state-owned acute care hospitals, excluding Villa Feliciana and inpatient psychiatric services, shall be reduced by 10 percent of the per diem rate on file as of July 31, 2012.

1. The Medicaid payments to state-owned hospitals that qualify for the supplemental payments, excluding Villa Feliciana and inpatient psychiatric services, shall be reimbursed at 90 percent of allowable costs and shall not be subject to per discharge or per diem limits.

2. The Medicaid payments to state-owned hospitals that do not qualify for the supplemental payments shall be reimbursed at 54 percent of allowable costs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:1241 (May 2012), amended LR 39:

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert  
Secretary

1311#067

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Bureau of Health Services Financing

LaCHIP Affordable Plan  
Dental Program  
Reimbursement Rate Reduction  
(LAC 50:III.20509)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:III.20509 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 14 of the 2013 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to

ensure expenditures remain at the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law.” This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for dental services in the LaCHIP Affordable Plan Dental Program in order to reduce the reimbursement fees (*Louisiana Register*, Volume 39, Number 5).

Due to a budgetary shortfall in state fiscal year 2014, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for the LaCHIP Affordable Plan dental services to reduce the reimbursement rates (*Louisiana Register*, Volume 39, Number 8). This Emergency Rule is being promulgated to continue the provisions of the August 1, 2013 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective November 30, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for the LaCHIP Affordable Plan dental services to reduce the reimbursement rates.

#### **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part III. Eligibility**

#### **Subpart 11. State Children’s Health Insurance Program**

#### **Chapter 205. Louisiana Children’s Health Insurance Program (LaCHIP) - Phase V**

#### **§20509. Dental Services Reimbursement Methodology**

A. - C. ...

D. Effective for dates of service on or after August 1, 2013, the reimbursement fees for LaCHIP Affordable Plan dental services shall be reduced by 1.5 percent of the rate on file July 31, 2013, unless otherwise stated in this Chapter.

1. The following services shall be excluded from the August 1, 2013 rate reduction:

- a. removable prosthodontics; and
- b. orthodontic services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XXI of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:1285 (May 2013), amended LR 39:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this

Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert  
Secretary

1311#068

### **DECLARATION OF EMERGENCY**

#### **Department of Health and Hospitals Bureau of Health Services Financing**

Medicaid Eligibility  
Medically Needy Program  
Behavioral Health Services  
(LAC 50:III.2313)

The Department of Health and Hospitals, Bureau of Health Services Financing hereby repeals and replaces all of the rules governing the Medically Needy Program, and adopts LAC 50:III.2313 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgated a Rule in order to reinstate the Title XIX Medically Needy Program (MNP) and to establish coverage restrictions (*Louisiana Register*, Volume 24, Number 5). All Behavioral health services are restricted from coverage under the Medically Needy Program.

In February 2012, the department adopted provisions in the Medicaid Program to restructure the existing behavioral health services delivery system into a comprehensive service delivery model called the Louisiana behavioral health partnership (LBHP). Certain recipients enrolled in the Medically Needy Program, whose Medicaid eligibility is based solely on the provisions of §1915(i) of Title XIX of the Social Security Act, are eligible to only receive behavioral health services. These recipients have difficulties accessing behavioral health services through the LBHP due to the service restrictions currently in place in the Medically Needy Program.

Therefore, the department promulgated an Emergency Rule which revised the provisions governing the Medically Needy Program in order to include behavioral health coverage for MNP recipients that qualify for the program under the provisions of §1915(i) of Title XIX of the Social Security Act. This Emergency Rule also repealed and replaced all of the Rules governing the Medically Needy Program in order to repromulgate these provisions in a clear and concise manner for inclusion in the *Louisiana Administrative Code* in a codified format (*Louisiana Register*, Volume 38, Number 12).

The department promulgated an Emergency Rule which amended the December 20, 2012 Emergency Rule to further clarify the provisions governing covered services

(*Louisiana Register*, Volume 39, Number 4). This Emergency Rule is being promulgated to continue the provisions of the April 20, 2013 Emergency Rule.

This action is being taken to promote the health and welfare of MNP recipients who are in need of behavioral health services, and to assure their continued access to these services.

Effective December 18, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the Medically Needy Program.

#### **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part III. Eligibility**

#### **Subpart 3. Eligibility Groups and Factors**

### **Chapter 23. Eligibility Groups and Medicaid Programs**

#### **§2313. Medically Needy Program**

A. The medically needy program (MNP) provides Medicaid coverage when an individual's or family's income and/or resources are sufficient to meet basic needs in a categorical assistance program, but not sufficient to meet medical needs according to the MNP standards.

1. The income standard used in the MNP is the federal medically needy income eligibility standard (MNIES).

2. Resources are not applicable to child- (C-) related MNP cases.

3. MNP eligibility cannot be considered prior to establishing income ineligibility in a categorically related assistance group.

#### **B. MNP Eligibility Groups**

##### **1. Regular Medically Needy**

a. Children and parents who meet all of the low-income with families and children (LIFC) related categorical requirements and whose income is at or below the MNIES are eligible to receive regular MNP benefits. Regular medically needy coverage is only applicable to individuals included in the C-related category of assistance.

b. Individuals in the aged- (A-), blind- (B-), or disability- (D-) related categorical assistance groups cannot receive regular MNP.

c. The certification period for regular MNP cannot exceed six months.

##### **2. Spend-Down Medically Needy**

a. Spend-down MNP is considered after establishing financial ineligibility in regular MNP or other categorically related Medicaid programs and excess income remains. Allowable medical bills/expenses incurred by the income unit are used to reduce (spend-down) the income to the allowable MNP limits.

b. The following individuals may be considered for spend-down MNP:

i. individuals or families who meet all of the LIFC related categorical requirements;

ii. non-institutionalized individuals (A-, B-, or D-related categories); and

iii. institutionalized individuals or couples (A-, B-, or D-related categories) with Medicare co-insurance whose income has been spent down to the MNIES.

c. The certification period for spend-down MNP begins no earlier than the spend-down date and shall not exceed three months.

##### **3. Long Term Care (LTC) Spend-Down MNP**

a. Individuals or couples residing in Medicaid LTC facilities, not on Medicare coinsurance with resources within the limits, but whose income exceeds the special income limits (three times the current federal benefit rate), are eligible for LTC spend-down MNP.

##### **4. C-Related Caretaker Relative MNP**

a. A qualified relative may be included in a C-related MNP certification as a caretaker relative. There must be at least one minor child applying for or enrolled in Medicaid. A caretaker relative for MNP purposes is an adult who:

i. is in the LIFC income unit with a minor child;

ii. is a qualified relative of a child who is eligible for supplemental security income (SSI), prohibited AFDC provisions (PAP), or Child Health and Maternity Program (CHAMP); and

iii. is not eligible for inclusion in the Medicaid certification of a sibling(s) because of income.

b. An essential person may be included with a qualified relative in an MNP caretaker relative certification, but there can be no essential person if there is no qualified relative certified in C-related MNP.

i. Stepparents or individuals who do not meet the above LIFC essential person criteria must qualify for Medicaid as individuals under the A, B, or D categorical assistance groups.

##### **5. Louisiana Behavioral Health Partnership (LBHP) 1915(i) MNP**

a. The LBHP Medically Needy Program is considered only for the individuals who meet the level of need requirements of §1915 of Title XIX of the Social Security Act, and who have been determined to be ineligible for other full Medicaid programs, including the regular MNP and spend-down MNP.

b. LBHP 1915(i) MNP recipients are only eligible to receive behavioral health services through the LBHP. They do not qualify for other Medicaid covered services.

c. The certification period for LBHP 1915(i) regular MNP recipients cannot exceed six months. For the LBHP 1915(i) spend-down MNP, the certification period begins no earlier than the spend-down date and shall not exceed three months.

C. The following services are covered in the Medically Needy Program for non-1915(i) recipients:

1. inpatient and outpatient hospital services;

2. intermediate care facilities for persons with developmental disabilities (ICF/DD) services;

3. intermediate care and skilled nursing facility (ICF and SNF) services;

4. physician services, including medical/surgical services by a dentist;

5. nurse midwife services;

6. certified registered nurse anesthetist (CRNA) and anesthesiologist services;

7. laboratory and x-ray services;

8. prescription drugs;

9. early and periodic screening, diagnosis and treatment (EPSDT) services;

10. rural health clinic services;

11. hemodialysis clinic services;

12. ambulatory surgical center services;
13. prenatal clinic services;
14. federally qualified health center services;
15. family planning services;
16. durable medical equipment;
17. rehabilitation services (physical therapy, occupational therapy, speech therapy);
18. nurse practitioner services;
19. medical transportation services (emergency and non-emergency);
20. home health services for individuals needing skilled nursing services;
21. chiropractic services;
22. optometry services;
23. podiatry services;
24. radiation therapy; and
25. behavioral health services limited to:
  - a. inpatient and outpatient hospital services;
  - b. emergency medical services;
  - c. physician/psychiatrist services); and
  - d. prescriptions drugs.

D. The following behavioral health services are covered for LBHP 1915(i) MNP recipients:

1. inpatient and outpatient hospital services;
2. emergency medical services;
3. physician/psychiatrist services;
4. treatment by a licensed mental health professional;
5. community psychiatric support and treatment;
6. psychosocial rehabilitation;
7. crisis intervention;
8. case conference [1915(b) services];
9. treatment planning [1915(b) services]; and
10. prescription drugs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert  
Secretary

1311#069

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Bureau of Health Services Financing

Medical Transportation Program  
Emergency Ambulance Services  
Reimbursement Rate Reduction  
(LAC 50:XXVII.325 and 353)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XXVII.325 and §353 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 13 of the 2012 Regular Session of

the Louisiana Legislature which states: “The secretary is directed to utilize various cost containment measures to ensure expenditures remain at the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law.” This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

Due to a budgetary shortfall in state fiscal year 2013, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for emergency medical transportation services to reduce the reimbursement rates (*Louisiana Register*, Volume 38, Number 7). The provisions of the July 1, 2012 Emergency Rule were finalized in May 2013 (*Louisiana Register*, Volume 39, Number 5). In anticipation of a budgetary shortfall in state fiscal year 2013 as a result of the reduction in the state’s disaster recovery Federal Medical Assistance Percentage (FMAP) rate, the department promulgated a subsequent Emergency Rule which amended the provisions governing emergency medical transportation services to further reduce the reimbursement rates (*Louisiana Register*, Volume 38, Number 8). This Emergency Rule is being promulgated to continue the provisions of the August 1, 2012 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective November 28, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for emergency medical transportation services to reduce the reimbursement rates.

## Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part XXVII. Medical Transportation Program

#### Chapter 3. Emergency Medical Transportation

#### Subchapter B. Ground Transportation

#### §325. Reimbursement

A. - I. ...

J. Effective for dates of service on or after August 1, 2012, the reimbursement rates for emergency ambulance transportation services shall be reduced by 5 percent of the rates on file as of July 31, 2012.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:878 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1248 (June 2010), amended LR 36:2564 (November 2010), LR 37:3029 (October 2011), LR 39:1285 (May 2013), LR 39:

#### Subchapter C. Aircraft Transportation

#### §353. Reimbursement

A. - G. ...

H. Effective for dates of service on or after August 1, 2012, the reimbursement rates for fixed winged and rotor winged emergency air ambulance services shall be reduced by 5 percent of the rates on file as of July 31, 2012.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:70 (January 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2594 (November 2010), amended LR 37:3029 (October 2011), LR 39:1285 (May 2013), LR 39:

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert  
Secretary

1311#070

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Bureau of Health Services Financing

Outpatient Hospital Services—Non-Rural, Non-State  
Hospitals and Children’s Specialty Hospitals  
Reimbursement Rate Reduction  
(LAC:V.5313, 5317, 5513, 5517,  
5713, 5719, 6115 and 6119)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.5313, §5317, §5513, §5517, §5713, §5719, §6115 and §6119 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 13 of the 2012 Regular Session of the Louisiana Legislature which states: “The secretary is directed to utilize various cost containment measures to ensure expenditures remain at the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law.” This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

As a result of a budgetary shortfall in state fiscal year 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for outpatient hospital services to reduce the reimbursement rates paid to non-rural, non-state hospitals and children’s specialty hospitals (*Louisiana Register*, Volume 37, Number 11).

In anticipation of a budgetary shortfall in state fiscal year 2013 as a result of the reduction in the state’s disaster recovery Federal Medical Assistance Percentage (FMAP) rate, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement

methodology for outpatient hospital services to reduce the reimbursement rates paid to non-rural, non-state hospitals and children’s specialty hospitals (*Louisiana Register*, Volume 38, Number 8). This Emergency Rule is being promulgated to continue the provisions of the August 1, 2012 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Taking the proposed rate reductions into consideration, the department has carefully reviewed the proposed rates and is satisfied that they are consistent with efficiency, economy and quality of care and are sufficient to enlist enough providers so that private (non-state) outpatient hospital services and children’s specialty hospital services under the State Plan are available at least to the extent that they are available to the general population in the state.

Effective November 28, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for outpatient hospital services to reduce the reimbursement rates.

## Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part V. Hospitals

#### Subpart 5. Outpatient Hospitals

#### Chapter 53. Outpatient Surgery

#### Subchapter B. Reimbursement Methodology

#### §5313. Non-Rural, Non-State Hospitals

A. - F.1. ...

G. Effective for dates of service on or after August 1, 2012, the reimbursement rates paid to non-rural, non-state hospitals for outpatient surgery shall be reduced by 3.7 percent of the fee schedule on file as of July 31, 2012.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Service Financing, LR 35:1900 (September 2009), amended LR 36:1250 (June 2010), amended LR 36:1250 (June 2010), LR 36:2041 (September 2010), LR 37:3266 (November 2011), LR 39:

#### §5317. Children’s Specialty Hospitals

A. - D.1. ...

E. Effective for dates of service on or after August 1, 2012, the reimbursement rates paid to children’s specialty hospitals for outpatient surgery shall be reduced by 3.7 percent of the fee schedule on file as of July 31, 2012.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2042 (September 2010), amended LR 37:3266 (November 2011), LR 39:

#### Chapter 55. Clinic Services

#### Subchapter B. Reimbursement Methodology

#### §5513. Non-Rural, Non-State Hospitals

A. - F.1. ...

G. Effective for dates of service on or after August 1, 2012, the reimbursement rates paid to non-rural, non-state hospitals for outpatient clinic services shall be reduced by 3.7 percent of the fee schedule on file as of July 31, 2012.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Service Financing, LR 35:1900 (September 2009), amended LR 36:1250 (June 2010), LR 36:1250 (June 2010), LR 36:2042 (September 2010), LR 37:3266 (November 2011), LR 39:

#### **§5517. Children's Specialty Hospitals**

A. - D. ...

E. Effective for dates of service on or after August 1, 2012, the reimbursement rates paid to children's specialty hospitals for outpatient hospital clinic services shall be reduced by 3.7 percent of the fee schedule on file as of July 31, 2012.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2042 (September 2010), amended LR 37:3266 (November 2011), LR 39:

### **Chapter 57. Laboratory Services**

#### **Subchapter B. Reimbursement Methodology**

#### **§5713. Non-Rural, Non-State Hospitals**

A. - F.1. ...

G. Effective for dates of service on or after August 1, 2012, the reimbursement rates paid to non-rural, non-state hospitals for outpatient laboratory services shall be reduced by 3.7 percent of the fee schedule on file as of July 31, 2012.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Service Financing, LR 35:1900 (September 2009), amended LR 36:1250 (June 2010), amended LR 36:1250 (June 2010), LR 36:2042 (September 2010), LR 37:3266 (November 2011), LR 39:

#### **§5719. Children's Specialty Hospitals**

A. - D. ...

E. Effective for dates of service on or after August 1, 2012, the reimbursement rates paid to children's specialty hospitals for outpatient clinical diagnostic laboratory services shall be reduced by 3.7 percent of the fee schedule on file as of July 31, 2012.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2043 (September 2010), amended LR 37:3267 (November 2011), LR 39:

### **Chapter 61. Other Outpatient Hospital Services**

#### **Subchapter B. Reimbursement Methodology**

#### **§6115. Non-Rural, Non-State Hospitals**

A. - F.1. ...

G. Effective for dates of service on or after August 1, 2012, the reimbursement rates paid to non-rural, non-state hospitals for outpatient hospital services other than clinical diagnostic laboratory services, outpatient surgeries, rehabilitation services and outpatient hospital facility fees shall be reduced by 3.7 percent of the rates in effect on July 31, 2012. Final reimbursement shall be at 67.13 percent of allowable cost through the cost settlement process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Service Financing, LR 35:1900 (September 2009), amended LR 36:1250 (June 2010), LR 36:1250 (June 2010), amended LR 36:2043 (September 2010), LR 37:3267 (November 2011), LR 39:

#### **§6119. Children's Specialty Hospitals**

A. - D.1. ...

E. Effective for dates of service on or after August 1, 2012, the reimbursement fees paid to children's specialty hospitals for outpatient hospital services other than rehabilitation services and outpatient hospital facility fees shall be reduced by 3.7 percent of the rates in effect on July 31, 2012. Final reimbursement shall be 82.96 percent of allowable cost as calculated through the cost report settlement process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2044 (September 2010), amended LR 37:3267 (November 2011), LR 39:

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert  
Secretary

1311#071

### **DECLARATION OF EMERGENCY**

#### **Department of Health and Hospitals Bureau of Health Services Financing**

Outpatient Hospital Services  
Public-Private Partnerships  
Reimbursement Methodology  
(LAC 50:V.6703)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.6703 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing outpatient hospital services to establish supplemental Medicaid payments to non-state owned hospitals in order to encourage them to take over the operation and management of state-owned hospitals that have terminated or reduced services (*Louisiana Register*, Volume 38, Number 11). Participating non-state owned hospitals shall enter into a cooperative endeavor agreement with the department to support this public-private partnership initiative. The department promulgated an Emergency Rule which amended the provisions of the November 1, 2012 Emergency Rule to revise the reimbursement methodology in order to correct the federal citation (*Louisiana Register*, Volume 39, Number 3).

The department promulgated an Emergency Rule which amended the provisions governing reimbursement for

Medicaid payments for outpatient services provided by non-state owned major teaching hospitals participating in public-private partnerships which assume the provision of services that were previously delivered and terminated or reduced by a state owned and operated facility (*Louisiana Register*, Volume 38, Number 4). This Emergency Rule is being promulgated to continue the provisions of the April 15, 2013 Emergency Rule. This action is being taken to promote the health and welfare of Medicaid recipients by maintaining recipient access to much needed hospital services.

Effective December 13, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing Medicaid payments for outpatient hospital services provided by non-state owned hospitals participating in public-private partnerships.

#### **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part V. Hospital Services**

#### **Subpart 5. Outpatient Hospital Services**

#### **Chapter 67. Public-Private Partnerships**

#### **§6703. Reimbursement Methodology**

A. Payments to qualifying hospitals shall be made on a quarterly basis in accordance with 42 CFR 447.321.

B. Effective for dates of service on or after April 15, 2013, a major teaching hospital that enters into a cooperative endeavor agreement with the Department of Health and Hospitals to provide acute care hospital services to Medicaid and uninsured patients, and which assumes providing services that were previously delivered and terminated or reduced by a state owned and operated facility shall be reimbursed as follows.

1. Outpatient Surgery. The reimbursement amount for outpatient hospital surgery services shall be an interim payment equal to the Medicaid fee schedule amount on file for each service, and a final reimbursement amount of 95 percent of allowable Medicaid cost.

2. Clinic Services. The reimbursement amount for outpatient clinic services shall be an interim payment equal to the Medicaid fee schedule amount on file for each service, and a final reimbursement amount of 95 percent of allowable Medicaid cost.

3. Laboratory Services. The reimbursement amount for outpatient clinical diagnostic laboratory services shall be the Medicaid fee schedule amount on file for each service.

4. Rehabilitative Services. The reimbursement amount for outpatient clinic services shall be an interim payment equal to the Medicaid fee schedule amount on file for each service, and a final reimbursement amount of 95 percent of allowable Medicaid cost.

5. Other Outpatient Hospital Services. The reimbursement amount for outpatient hospital services other than clinical diagnostic laboratory services, outpatient surgeries, rehabilitation services and outpatient hospital facility fees shall be an interim payment equal to 95 percent of allowable Medicaid cost.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert  
Secretary

1311#072

### **DECLARATION OF EMERGENCY**

#### **Department of Health and Hospitals Bureau of Health Services Financing**

Outpatient Hospital Services—Small Rural Hospitals  
Low Income and Needy Care Collaboration  
(LAC 50:V.5311, 5511, 5711, 5911, and 6113)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.5311, 5511, 5711, 5911, and 6113 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

In compliance with Act 327 of the 2007 Regular Session of the Louisiana Legislature, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the reimbursement methodology governing state fiscal year 2009 Medicaid payments to small rural hospitals for outpatient hospital services (*Louisiana Register*, Volume 35, Number 5). The Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for outpatient hospital services to provide for a supplemental Medicaid payment to small rural hospitals that enter into an agreement with a state or local governmental entity for the purpose of providing healthcare services to low income and needy patients (*Louisiana Register*, Volume 37, Number 11). The department promulgated an Emergency Rule which amended the provisions of the October 20, 2011 Emergency Rule in order to clarify the qualifying criteria (*Louisiana Register*, Volume 37, Number 12). This Emergency Rule is being promulgated to continue the provisions of the December 20, 2011 Emergency Rule. This action is being taken to secure new federal funding and to promote the public health and welfare of Medicaid recipients by ensuring sufficient provider participation in the Hospital Services Program.

Effective December 14, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for outpatient hospital services rendered by small rural hospitals.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part V. Hospital Services**

**Subpart 5. Outpatient Hospital Services**

**Chapter 53. Outpatient Surgery**

**Subchapter B. Reimbursement Methodology**

**§5311. Small Rural Hospitals**

A. - B.

C. Low Income and Needy Care Collaboration. Effective for dates of service on or after October 20, 2011, quarterly supplemental payments will be issued to qualifying non-state hospitals for outpatient surgery services rendered during the quarter. Maximum aggregate payments to all qualifying hospitals in this group shall not exceed the available upper payment limit per state fiscal year.

1. Qualifying Criteria. In order to qualify for the supplemental payment, the non-state hospital must be affiliated with a state or local governmental entity through a low income and needy care collaboration agreement.

*Non-state Hospital*—a hospital which is owned or operated by a private entity.

*Low Income and Needy Care Collaboration Agreement*—an agreement between a hospital and a state or local governmental entity to collaborate for purposes of providing healthcare services to low income and needy patients.

2. Each qualifying hospital shall receive quarterly supplemental payments for the outpatient services rendered during the quarter. Payments shall be distributed quarterly based on Medicaid paid claims for service dates from the previous state fiscal year. Payments to hospitals participating in the Medicaid disproportionate share hospital (DSH) Program shall be limited to the difference between the hospital's specific DSH limit and the hospital's DSH payments for the applicable payment period. Aggregate payments to qualifying hospitals shall not exceed the maximum allowable cap for the state fiscal year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:956 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

**Chapter 55. Clinic Services**

**Subchapter B. Reimbursement Methodology**

**§5511. Small Rural Hospitals**

A. - B. ...

C. Low Income and Needy Care Collaboration. Effective for dates of service on or after October 20, 2011, quarterly supplemental payments will be issued to qualifying non-state hospitals for outpatient hospital clinic services rendered during the quarter. Maximum aggregate payments to all qualifying hospitals in this group shall not exceed the available upper payment limit per state fiscal year.

1. Qualifying Criteria. In order to qualify for the supplemental payment, the non-state hospital must be affiliated with a state or local governmental entity through a low income and needy care collaboration agreement.

*Non-state Hospital*—a hospital which is owned or operated by a private entity.

*Low Income and Needy Care Collaboration Agreement*—an agreement between a hospital and a state or local governmental entity to collaborate for purposes of providing healthcare services to low income and needy patients.

2. Each qualifying hospital shall receive quarterly supplemental payments for the outpatient services rendered during the quarter. Payments shall be distributed quarterly based on Medicaid paid claims for service dates from the previous state fiscal year. Payments to hospitals participating in the Medicaid DSH Program shall be limited to the difference between the hospital's specific DSH limit and the hospital's DSH payments for the applicable payment period. Aggregate payments to qualifying hospitals shall not exceed the maximum allowable cap for the state fiscal year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:956 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

**Chapter 57. Laboratory Services**

**Subchapter B. Reimbursement Methodology**

**§5711. Small Rural Hospitals**

A. - B. ...

C. Low Income and Needy Care Collaboration. Effective for dates of service on or after October 20, 2011, quarterly supplemental payments will be issued to qualifying non-state hospitals for outpatient laboratory services rendered during the quarter. Maximum aggregate payments to all qualifying hospitals in this group shall not exceed the available upper payment limit per state fiscal year.

1. Qualifying Criteria. In order to qualify for the supplemental payment, the non-state hospital must be affiliated with a state or local governmental entity through a low income and needy care collaboration agreement.

*Non-state Hospital*—a hospital which is owned or operated by a private entity.

*Low Income and Needy Care Collaboration Agreement*—an agreement between a hospital and a state or local governmental entity to collaborate for purposes of providing healthcare services to low income and needy patients.

2. Each qualifying hospital shall receive quarterly supplemental payments for the outpatient services rendered during the quarter. Payments shall be distributed quarterly based on the Medicaid paid claims for services rendered during the quarter. Payments to hospitals participating in the Medicaid DSH Program shall be limited to the difference between the hospital's specific DSH limit and the hospital's DSH payments for the applicable payment period. Aggregate payments to qualifying hospitals shall not exceed the maximum allowable cap for the state fiscal year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:956 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

**Chapter 59. Rehabilitation Services**  
**Subchapter B. Reimbursement Methodology**

**§5911. Small Rural Hospitals**

A. - B. ...

C. Low Income and Needy Care Collaboration. Effective for dates of service on or after October 20, 2011, quarterly supplemental payments will be issued to qualifying non-state hospitals for outpatient rehabilitation services rendered during the quarter. Maximum aggregate payments to all qualifying hospitals in this group shall not exceed the available upper payment limit per state fiscal year.

1. Qualifying Criteria. In order to qualify for the supplemental payment, the non-state hospital must be affiliated with a state or local governmental entity through a low income and needy care collaboration agreement.

*Non-state Hospital*—a hospital which is owned or operated by a private entity.

*Low Income and Needy Care Collaboration Agreement*—an agreement between a hospital and a state or local governmental entity to collaborate for purposes of providing healthcare services to low income and needy patients.

2. Each qualifying hospital shall receive quarterly supplemental payments for the outpatient services rendered during the quarter. Payments shall be distributed quarterly based on Medicaid paid claims for service dates from the previous state fiscal year. Payments to hospitals participating in the Medicaid DSH Program shall be limited to the difference between the hospital's specific DSH limit and the hospital's DSH payments for the applicable payment period. Aggregate payments to qualifying hospitals shall not exceed the maximum allowable cap for the state fiscal year. .

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:956 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

**Chapter 61. Other Outpatient Hospital Services**

**Subchapter B. Reimbursement Methodology**

**§6113. Small Rural Hospitals**

A. - B. ...

C. Low Income and Needy Care Collaboration. Effective for dates of service on or after October 20, 2011, quarterly supplemental payments will be issued to qualifying non-state hospitals for services other than clinical diagnostic laboratory services, outpatient surgeries, rehabilitation services, and outpatient facility fees during the quarter. Maximum aggregate payments to all qualifying hospitals in this group shall not exceed the available upper payment limit per state fiscal year.

1. Qualifying Criteria. In order to qualify for the supplemental payment, the non-state hospital must be affiliated with a state or local governmental entity through a low income and needy care collaboration agreement.

*Non-state Hospital*—a hospital which is owned or operated by a private entity.

*Low Income and Needy Care Collaboration Agreement*—an agreement between a hospital and a state or local governmental entity to collaborate for purposes of providing healthcare services to low income and needy patients.

2. Each qualifying hospital shall receive quarterly supplemental payments for the outpatient services rendered during the quarter. Payments shall be distributed quarterly based on Medicaid paid claims for service dates from the previous state fiscal year. Payments to hospitals participating in the Medicaid DSH Program shall be limited to the difference between the hospital's specific DSH limit and the hospital's DSH payments for the applicable payment period. Aggregate payments to qualifying hospitals shall not exceed the maximum allowable cap for the state fiscal year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:956 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert  
Secretary

1311#073

**DECLARATION OF EMERGENCY**

**Department of Health and Hospitals**  
**Bureau of Health Services Financing**

Outpatient Hospital Services  
State-Owned Hospitals  
Reimbursement Rate Reduction  
(LAC 50:V.5319, 5519, 5715, and 6127)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.5319, §5519, §5715, and §6127 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 13 of the 2012 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures remain at the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior

authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law.” This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for outpatient hospital services in order to continue medical education payments to state-owned hospitals when the hospitals are reimbursed by prepaid risk-bearing managed care organizations for outpatient surgeries, clinic services, rehabilitation services, and other covered outpatient hospital services (*Louisiana Register*, Volume 38, Number 2). The February 10, 2012 Emergency Rule was amended to clarify the provisions governing the reimbursement methodology for outpatient hospital services (*Louisiana Register*, Volume 38, Number 3).

In anticipation of a budgetary shortfall in state fiscal year 2013 as a result of the reduction in the state’s disaster recovery Federal Medical Assistance Percentage (FMAP) rate, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for outpatient hospital services to reduce the reimbursement rates paid to state-owned hospitals (*Louisiana Register*, Volume 38, Number 8). This Emergency Rule is being promulgated to continue the provisions of the August 1, 2012 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective November 28, 2013, the Department of Health and Hospitals Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for outpatient hospital services to reduce the reimbursement rates paid to state-owned hospitals.

#### **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part V. Hospital Services**

#### **Subpart 5. Outpatient Hospitals**

#### **Chapter 53. Outpatient Surgery**

#### **Subchapter B. Reimbursement Methodology**

#### **§5319. State-Owned Hospitals**

A. - A.2. ...

B. Effective for dates of service on or after August 1, 2012, the reimbursement rates paid to state-owned hospitals for outpatient surgery shall be reduced by 10 percent of the fee schedule on file as of July 31, 2012.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Service Financing, LR 39:

#### **Chapter 55. Clinic Services**

#### **Subchapter B. Reimbursement Methodology**

#### **§5519. State-Owned Hospitals**

A. - A.2.

B. Effective for dates of service on or after August 1, 2012, the reimbursement rates paid to state-owned hospitals for outpatient clinic services shall be reduced by 10 percent of the of the fee schedule on file as of July 31, 2012.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

#### **Chapter 57. Laboratory Services**

#### **Subchapter B. Reimbursement Methodology**

#### **§5715. State-Owned Hospitals**

A. ...

B. Effective for dates of service on or after August 1, 2012, the reimbursement rates paid to state-owned hospitals for outpatient laboratory services shall be reduced by 10 percent of the fee schedule on file as of July 31, 2012.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Service Financing, LR 35:956 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

#### **Chapter 61. Other Outpatient Hospital Services**

#### **Subchapter B. Reimbursement Methodology**

#### **§6127. State-Owned Hospitals**

A. - B.2. ...

C. Effective for dates of service on or after August 1, 2012, the reimbursement rates paid to state hospitals for outpatient hospital services other than clinical diagnostic laboratory services, outpatient surgeries, rehabilitation services and outpatient hospital facility fees shall be reduced by 10 percent of the rates in effect on July 31, 2012. Final reimbursement shall be at 90 percent of allowable cost through the cost settlement process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:957 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert  
Secretary

1311#074

### **DECLARATION OF EMERGENCY**

#### **Department of Health and Hospitals Bureau of Health Services Financing**

Professional Services Program  
Physician Services  
Reclassification of Optometry Services  
(LAC 50:IX.15111 and 15113)

The Department of Health and Hospitals, Bureau of Health Services Financing repeals the February 1982, January 1987, February 1987, and April 1987 Rules governing optometry services, and amends

LAC 50:IX.15111 and §15113 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing provides Medicaid reimbursement for optometry services as an optional covered service under the Medicaid State Plan. Optometrists are classified in the Medicaid State Plan as other licensed practitioners and their services are not considered mandatory physician services.

The American Recovery and Reinvestment Act (ARRA) of 2009 authorized 100 percent federal financial participation to states for the purpose of establishing incentive payments to encourage Medicaid health care providers to adopt, implement, and use certified electronic health records (EHR) technology. The Act does not provide for incentive payments to optometrist unless the services rendered by these practitioners are classified as mandatory physician services under the Medicaid State Plan.

Since the department already provides Medicaid reimbursement to participating optometrist to the same extent as physicians who perform the same eye care services, the department promulgated an Emergency Rule which amended the provisions governing physician services in the Professional Services Program in order to reclassify optometry services as a mandatory physician service under the Medicaid state plan (*Louisiana Register*, Volume 38, Number 10). This reclassification will allow optometrists to qualify for EHR incentive payments. This Emergency Rule also repeals the February 1982, January 1987, February 1987, and April 1987 Rules governing optometry services, and revises and repromulgates the June 1985 Rule in a codified format for inclusion in the *Louisiana Administrative Code* (LAC). The department promulgated an Emergency Rule which amended the provisions of the October 1, 2012 Emergency Rule in order to revise the formatting to ensure that these provisions are promulgated in a clear and concise manner (*Louisiana Register*, Volume 39, Number 5).

The department promulgated an Emergency Rule which amended the provisions of the May 20, 2013 Emergency Rule in order to further revise the formatting to ensure that these provisions are appropriately promulgated in the LAC (*Louisiana Register*, Volume 39, Number 8). This Emergency Rule is being promulgated to continue the provisions of the August 20, 2013 Emergency Rule. This action is being taken to secure new and enhanced federal funding, and to expand provider participation in the EHR Incentive Payment Program.

Effective December 19, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing physician services covered in the Professional Services Program.

## Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part IX. Professional Services Program

##### Subpart 15. Reimbursement

#### Chapter 151. Reimbursement Methodology

##### Subchapter B. Physician Services

##### §15111. General Provisions

A. The reimbursement rates for physician services shall be a flat fee for each covered service as specified on the established Medicaid fee schedule. The reimbursement rates shall be based on a percentage of the Louisiana Medicare Region 99 allowable for a specified year.

##### B. Optometry Services

1. Effective October 1, 2012, eye care services rendered by a participating optometrist, within their scope of optometric practice, shall be classified and reimbursed under the Medicaid State Plan as a mandatory physician service to the same extent, and according to the same standards as physicians who perform the same eye care services.

2. Recipients in the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program are excluded from optometry service limits.

3. The Medicaid Program shall not provide reimbursement for eyeglasses provided to Medicaid recipients 21 years of age or older.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

##### §15113. Reimbursement

A. Effective for dates of service on or after October 15, 2007, the reimbursement for selected physician services shall be 90 percent of the 2007 Louisiana Medicare Region 99 allowable or billed charges, whichever is the lesser amount, unless otherwise stipulated.

1. The reimbursement shall remain the same for those services that are currently being reimbursed at a rate that is between 90 percent and 120 percent of the 2007 Louisiana Medicare Region 99 allowable.

2. For those services that are currently reimbursed at a rate above 120 percent of the 2007 Louisiana Medicare Region 99 allowable, effective for dates of service on or after October 15, 2007, the reimbursement for these services shall be reduced to 120 percent of the 2007 Louisiana Medicare Region 99 allowable.

B. Effective for dates of service on or after January 1, 2008, the reimbursement for selected physician services shall be 90 percent of the 2008 Louisiana Medicare Region 99 allowable or billed charges, whichever is the lesser amount, unless otherwise stipulated.

1. The reimbursement shall remain the same for those services that are currently being reimbursed at a rate that is between 90 percent and 120 percent of the 2008 Louisiana Medicare Region 99 allowable.

2. For those services that are currently reimbursed at a rate above 120 percent of the 2008 Louisiana Medicare Region 99 allowable, effective for dates of service on or

after January 1, 2008, the reimbursement for these services shall be reduced to 120 percent of the 2008 Louisiana Medicare Region 99 allowable.

C. Effective for dates of service on or after August 4, 2009, the reimbursement for all physician services rendered to recipients 16 years of age or older shall be reduced to 80 percent of the 2009 Louisiana Medicare Region 99 allowable or billed charges, whichever is the lesser amount.

1. For those services that are currently reimbursed at a rate below 80 percent of the Louisiana Medicare Region 99 allowable, effective for dates of service on or after August 4, 2009, the reimbursement for these services shall be increased to 80 percent of the Louisiana Medicare Region 99 allowable or billed charges, whichever is the lesser amount.

2. The following physician services are excluded from the rate adjustment:

- a. preventive medicine evaluation and management;
- b. immunizations;
- c. family planning services; and
- d. select orthopedic reparative services.

3. Effective for dates of service on or after November 20, 2009, the following physician services are excluded from the rate adjustment:

- a. prenatal evaluation and management; and
- b. delivery services.

D. Effective for dates of service on or after January 22, 2010, physician services rendered to recipients 16 years of age or older shall be reduced to 75 percent of the 2009 Louisiana Medicare Region 99 allowable or billed charges, whichever is the lesser amount.

1. The following physician services rendered to recipients 16 years of age or older shall be reimbursed at 80 percent of the 2009 Louisiana Medicare Region 99 allowable or billed charges, whichever is the lesser amount:

- a. prenatal evaluation and management services;
- b. preventive medicine evaluation and management services; and
- c. obstetrical delivery services.

2. - 3.b.Repealed.

E. Effective for dates of service on or after January 22, 2010, all physician services rendered to recipients under the age of 16 shall be reimbursed at 90 percent of the 2009 Louisiana Medicare Region 99 allowable or billed charges, whichever is the lesser amount.

1. - 1.c. Repealed.

F. Effective for dates of service on or after January 22, 2010, all physician-administered drugs shall be reimbursed at 90 percent of the 2009 Louisiana Medicare Average Sales Price (ASP) allowable or billed charges, whichever is the lesser amount.

G. Effective for dates of service on or after January 22, 2010, all physician services that are currently reimbursed below the reimbursement rates in §15113.D-F shall be increased to the rates in §15113.D-F.

H. Effective for dates of service on or after December 1, 2010, reimbursement shall be 90 percent of the 2009 Louisiana Medicare Region 99 allowable for the following obstetric services when rendered to recipients 16 years of age and older:

1. vaginal-only delivery (with or without postpartum care);
2. vaginal delivery after previous cesarean (VBAC) delivery; and
3. cesarean delivery following attempted vaginal delivery after previous cesarean delivery. The reimbursement for a cesarean delivery remains at 80 percent of the 2009 Louisiana Medicare Region 99 allowable when the service is rendered to recipients 16 years of age and older.

I. - K. Reserved.

K.1. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1252 (June 2010), amended LR 36:2282 (October 2010), amended LR 37:904 (March 2011), LR 39:

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to all inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert  
Secretary

1311#075

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Bureau of Health Services Financing

Professional Services Program  
Physician Services  
Reimbursement Rate Reduction  
(LAC 50:IX.15113)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:IX.15113 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 13 of the 2012 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures remain at the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for physician

delivery services services to increase the reimbursement rates for obstetric (*Louisiana Register*, Volume 37, Number 3).

As a result of a budgetary shortfall in state fiscal year 2013, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for physician services to reduce the reimbursement rates and discontinue reimbursement for certain procedures (*Louisiana Register*, Volume 38, Number 7). The department promulgated Emergency Rules which amended the provisions of the July 1, 2012 Emergency Rule in order to revise the formatting to ensure that these provisions are promulgated in a clear and concise manner (*Louisiana Register*, Volume 38, Number 10 and Volume 39, Number 5). The department promulgated an Emergency Rule which amended the provisions of the May 20, 2013 Emergency Rule governing the reimbursement methodology for physician services (*Louisiana Register*, Volume 39, Number 8). This Emergency Rule is being promulgated to continue the provisions of the August 20, 2013 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective December 19, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for physician services.

#### **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part IX. Professional Services Program**

#### **Subpart 15. Reimbursement**

#### **Chapter 151. Reimbursement Methodology**

#### **Subchapter B. Physician Services**

#### **§15113. Reimbursement**

##### **A. - H.3....**

I. Effective for dates of service on or after July 1, 2012, reimbursement shall be as follows for the designated physician services:

1. reimbursement for professional services procedure (consult) codes 99241-99245 and 99251-99255 shall be discontinued;

2. cesarean delivery fees (procedure codes 59514-59515) shall be reduced to equal corresponding vaginal delivery fees (procedure codes 59409-59410); and

3. reimbursement for all other professional services procedure codes shall be reduced by 3.4 percent of the rates on file as of June 30, 2012.

##### **J. - K. Reserved.**

##### **1. Repealed.**

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

##### **HISTORICAL**

NOTE:Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1252 (June 2010), amended LR 36:2282 (October 2010), amended LR 37:904 (March 2011), LR 39:

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this

Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert  
Secretary

1311#076

### **DECLARATION OF EMERGENCY**

#### **Department of Health and Hospitals Bureau of Health Services Financing**

Professional Services Program  
Physician Services  
Reimbursement Rate Reduction  
(LAC 50:IX.15113)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:IX.15113 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 13 of the 2012 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures remain at the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for physician services to increase the reimbursement rates for obstetric delivery services (*Louisiana Register*, Volume 37, Number 3).

As a result of a budgetary shortfall in state fiscal year 2013, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for physician services to reduce the reimbursement rates and discontinue reimbursement for certain procedures (*Louisiana Register*, Volume 38, Number 7). The department subsequently amended the provisions of the July 1, 2012 Emergency Rule in order to revise the formatting to ensure that these provisions are promulgated in a clear and concise manner (*Louisiana Register*, Volume 38, Number 10).

Due to a continuing budgetary shortfall in state fiscal year 2013, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for physician services in order to further reduce the reimbursement rates (*Louisiana Register*, Volume 39, Number 1). The department promulgated an Emergency Rule which amended the provisions of the October 20, 2012

Emergency Rule in order to revise the formatting to ensure that these provisions are promulgated in a clear and concise manner (*Louisiana Register*, Volume 39, Number 5). The department promulgated an Emergency Rule which amended the provisions of the May 20, 2013 Emergency Rule governing the reimbursement methodology for physician services (*Louisiana Register*, Volume 39, Number 8). This Emergency Rule is being promulgated to continue the provisions of the August 20, 2013 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective December 19, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for physician services.

#### **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part IX. Professional Services Program**

##### **Subpart 15. Reimbursement**

#### **Chapter 151. Reimbursement Methodology**

##### **Subchapter B. Physician Services**

#### **§15113. Reimbursement**

A. - H.3. ...

I. - J.4. Reserved.

K. Effective for dates of service on or after February 1, 2013, the reimbursement for certain physician services shall be reduced by 1 percent of the rate in effect on January 31, 2013.

1. Repealed.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1252 (June 2010), amended LR 36:2282 (October 2010), amended LR 37:904 (March 2011), LR 39:

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert  
Secretary

1311#077

### **DECLARATION OF EMERGENCY**

#### **Department of Health and Hospitals Bureau of Health Services Financing and**

#### **Office of Behavioral Health**

Substance Abuse Services  
Reimbursement Rate Reduction  
(LAC 50:XXXIII.14701)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health amend LAC 50:XXXIII.14701 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 13 of the 2012 Regular Session of the

Louisiana Legislature which states: “The secretary is directed to utilize various cost containment measures to ensure expenditures remain at the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law.” This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing adopted provisions to implement a coordinated behavioral health services system under the Medicaid Program which provides coverage of substance abuse services for children and adults (*Louisiana Register*, Volume 38, Number 2).

As a result of a budgetary shortfall in state fiscal year 2013, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for substance abuse services to reduce the reimbursement rates for outpatient substance abuse services provided to children/adolescents (*Louisiana Register*, Volume 38, Number 7). This Emergency Rule is being promulgated to continue the provisions of the July 1, 2012 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective October 28, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health amend the provisions governing the reimbursement methodology for substance abuse services to reduce the reimbursement rates.

#### **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part XXXIII. Behavioral Health Services**

##### **Subpart 15. Substance Abuse Services**

#### **Chapter 147. Reimbursement**

#### **§14701. Reimbursement Methodology**

A. ...

B. Effective for dates of service on or after July 1, 2012, the reimbursement rates for outpatient substance abuse services provided to children/adolescents shall be reduced by 1.44 percent of the rates in effect on June 30, 2012.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:427 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 39:

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert  
Secretary

1311#008

# DECLARATION OF EMERGENCY

## Department of Health and Hospitals Office of Public Health

Minimum Disinfectant Residual Levels in Public Water Systems (LAC 51:XII.311, 355, 357, 361, 363, 367, 903, 1102, 1105, 1117, 1119, 1125, 1133, 1135, 1139, and 1503)

The state health officer, acting through the Department of Health and Hospitals, Office of Public Health (DHH, OPH), pursuant to the rulemaking authority granted by R.S. 40:4(A)(8) and (13), hereby adopts the following Emergency Rule to prevent an imminent peril to the public health and safety. This Rule is being promulgated in accordance with the Administrative Procedure Act (R.S. 49:950 et seq.).

The state health officer, through DHH, OPH, finds it necessary to promulgate an Emergency Rule effective November 6, 2013. This Emergency Rule increases the minimum disinfection residual levels that are required for public water systems. Among other items addressed as well, the Rule increases the number of residual measurements taken monthly by 25 percent. The Rule clarifies that daily residual measurements are required at the point of maximum residence time in the distribution system and records of chlorine residual measurements taken in the distribution system, besides from the treatment plant(s) itself, shall be recorded and retained by the public water system as required by the national primary drinking water regulations. This rule is based upon scientific data and recommendations from the federal Centers for Disease Control and Prevention (CDC) relative to the control of the *Naegleria fowleri* (brain-eating amoeba) parasite, which has recently been found in two public water systems in Louisiana. Unless rescinded or terminated earlier, this Emergency Rule shall remain in effect for the maximum period authorized under state law. This Emergency Rule may be amended as additional research and science data becomes available.

### Title 51

## PUBLIC HEALTH—SANITARY CODE

### Part XII. Water Supplies

#### Chapter 3. Water Quality Standards

##### §311. Records

###### [formerly paragraph 12:003-2]

A. Complete daily records of the operation of a public water system, including reports of laboratory control tests and any chemical test results required for compliance determination, shall be kept and retained as prescribed in the national primary drinking water regulations on forms approved by the state health officer. When specifically requested by the state health officer or required by other requirements of this Part, copies of these records shall be provided to the office designated by the state health officer within 10 days following the end of each calendar month. Additionally, all such records shall be made available for review during inspections/sanitary surveys performed by the state health officer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(8) and 40:5(2)(3)(5)(6)(17)(20).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1321 (June 2002), amended LR 30:1195 (June 2004), LR 39:

##### §355. Mandatory Disinfection

###### [formerly paragraph 12:021-1]

A. Routine, continuous disinfection is required of all public water systems.

1. Where a continuous chloramination (i.e., chlorine with ammonia addition) method is used, water being delivered to the distribution system shall contain a minimum concentration of 0.5 mg/l of chloramine residual (measured as total chlorine).

2. Where a continuous free chlorination method is used, water being delivered to the distribution system shall contain a minimum concentration of free chlorine residual in accordance with the following table.

pH Value	Free Chlorine Residual
up to 7.0	0.5 mg/l
7.0 to 8.0	0.6 mg/l
8.0 to 9.0	0.8 mg/l
over 9.0	1.0 mg/l

a. Table 355.A.2 does not apply to systems using chloramines.

b. pH values shall be measured in accordance with the methods set forth in §1105.D of this Part.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4 (A)(8)(13) and R.S. 40:5(2)(3)(5)(6)(17)(20).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1326 (June 2002), amended LR 28:2514 (December 2002), LR 35:1240 (July 2009), LR 38:2376 (September 2012), LR 39:

##### §357. Minimum Disinfection Residuals

###### [formerly paragraph 12:021-2]

A. Disinfection equipment shall be operated to maintain disinfectant residuals in each finished water storage tank and at all points throughout the distribution system at all times in accordance with the following minimum levels:

1. a free chlorine residual of 0.5 mg/l; or

2. a chloramine residual (measured as total chlorine) of 0.5 mg/l for those systems that feed ammonia.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4 (A)(8)(13) and R.S. 40:5 (2)(3)(5)(6)(17)(20).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1327 (June 2002), amended LR 39:

##### §361. Implementation of Disinfection Requirements

A. A public water system not holding a disinfection variance on November 6, 2013 shall comply with the requirements of §355.A, §357, §367.C, and §367.G of this Part on the later of:

1. February 1, 2014; or

2. the expiration date of any additional time for compliance beyond February 1, 2014 granted by the state health officer. A request for additional time may be submitted in writing prior to February 1, 2014 only, and shall provide detailed justification and rationale for the additional time requested. The state health officer may grant such additional time if significant infrastructure improvements are required to achieve compliance with said requirements.

B. A public water system holding a disinfection variance on November 6, 2013 shall comply with one of the following options by February 1, 2014:

1. implement continuous disinfection that complies with the requirements of §355.A, §357, §367.C, and §367.G of this Part;

2. request additional time for complying with the requirements of §355.A, §357, §367.C, and §367.G of this Part by submitting a written request, if significant infrastructure improvements are required to achieve compliance therewith or extraordinary circumstances exist with regard to the introduction of disinfection to the system. Such written request shall provide detailed justification and rationale for the additional time requested;

3. (This option shall be available only if the public water system's potable water distribution piping is utilized for onsite industrial processes.) notify the state health officer in writing that in lieu of implementing continuous disinfection, the PWS has provided, and will thereafter provide on a quarterly basis, notification to all system users, in a manner compliant with §1907 of this Part, that the system does not disinfect its water. The notification shall state that because the water is not disinfected, the water quality is unknown in regard to the *Naegleria fowleri* amoeba. A public water system selecting this option must sign an acknowledgement form, to be developed by the state health officer, stating that the public water system understands the risks presented by the lack of disinfection and that the public water system maintains responsibility for ensuring the safety of its water for end users; or

4. (This option shall be available only if the public water system's potable water distribution piping is utilized for onsite industrial processes.) request approval of an alternate plan providing water quality and public health protection equivalent to the requirements of §355.A and §357 of this Part. The state health officer may approve such a plan only if it is supported by peer reviewed, generally accepted research and science.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4 (A)(8)(13) and R.S. 40:5 (2)(3)(5)(6)(17)(20).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1327 (June 2002), repealed and repromulgated LR 39:

### §363. Revocation of Variances

[formerly paragraph 12:021-5]

A. A variance from mandatory disinfection shall be revoked when a public water system has a bacteriological MCL violation. When a variance is revoked, the system shall install mandatory continuous disinfection as stated in §355 of this Part within the times specified in a compliance schedule submitted to and approved by the state health officer. Such schedule shall be submitted within 10 days of receipt of notice of revocation.

B. Except for variances held by qualifying public water systems that comply with §361.B.3 of this Part or receive approval of an alternate plan under §361.B.4 of this Part, any variance concerning the mandatory disinfection requirements of §355 and/or §357 of this Part held by a public water system as of November 6, 2013 shall be automatically revoked on the later of:

1. February 1, 2014;

2. the expiration date of any additional time for compliance granted by the state health officer under §361.B.2 of this Part; or

3. the denial of a request for approval of an alternate plan submitted under §361.B.4 of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4 (A)(8)(13) and R.S. 40:5 (2)(3)(5)(6)(17)(20).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1327 (June 2002), amended LR 39:

### §367. Disinfectant Residual Monitoring and Record Keeping

[formerly paragraph 12:021-7]

A. Disinfectant Residual Monitoring in Treatment Plant. A public water system (PWS) shall measure the residual disinfectant concentration in water being delivered to the distribution system at least once per day.

B. Disinfectant Residual Monitoring in Distribution System. A PWS shall measure the residual disinfectant concentration within the distribution system:

1. by sampling at the same points in the distribution system and at the same times that samples for total coliforms are required to be collected by the PWS under this Part;

2. by sampling at an additional number of sites calculated by multiplying 0.25 times the number of total coliform samples the PWS is required under this Part to take on a monthly or quarterly basis, rounding any mixed (fractional) number product up to the next whole number. These additional residual monitoring samples shall be taken from sites in low flow areas and extremities in the distribution system at regular time intervals throughout the applicable monthly or quarterly sampling period; and

3. by sampling at the site that represents the maximum residence time (MRT) in the distribution system at least once per day.

C. A PWS shall increase sampling to not less than daily at any site in the distribution system that has a measured disinfectant residual concentration of less than 0.5 mg/l free chlorine or 0.5 mg/l chloramine residual (measured as total chlorine) until such disinfectant residual concentration is achieved at such site.

D. The records of the measurement and sampling required under Subsections A and B of this Section shall be maintained on forms approved by the state health officer and shall be retained as prescribed in the national primary drinking water regulations, and shall be made available for review upon request by the state health officer.

E. Each PWS shall submit a written monitoring plan to the state health officer for review and approval. The monitoring plan shall be on a form approved by the state health officer and shall include all the total coliform and disinfectant residual monitoring sites required under this Section and §903.A of this Part. Each PWS shall also submit a map of the distribution system depicting all total coliform and disinfectant residual monitoring sites required under this Section. The sites shall be identified along with a 911 street address (If there is no 911 street address, then the latitude/longitude coordinates shall be provided.). A PWS in existence as of November 6, 2013 shall submit such a monitoring plan no later than January 1, 2014.

F. Chlorine residuals shall be measured in accordance with the analytical methods set forth in §1105.C of this Part.

G. Where a continuous chloramination (i.e., chlorine with ammonia addition) method is used, a nitrification control plan shall be developed and submitted to the state health officer. A PWS in existence as of November 6, 2013 shall submit such a nitrification control plan no later than March 1, 2014.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(8)(13) and 40:5(2)(3)(5)(6)(17)(20).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1327 (June 2002), amended LR 30:1195 (June 2004), LR 39:

**Chapter 9. Louisiana Total Coliform Rule  
[formerly Appendix C]**

**§903. Coliform Routine Compliance Monitoring  
[formerly Coliform Routine Compliance  
Monitoring of Appendix C]**

A. Public water systems shall collect routine total coliform samples at sites which are representative of water throughout the distribution system in accordance with a written monitoring plan approved by the state health officer. Each public water system (PWS) shall submit a written monitoring plan on a form approved by the state health officer. The monitoring plan shall include a minimum number of point of collection (POC) monitoring sites calculated by multiplying 1.5 times the minimum number of samples required to be routinely collected in accordance with Subsections C and D of this Section, rounding any mixed (fractional) number product up to the next whole number. The monitoring plan shall include a map of the system with each POC sampling site identified along with a 911 street address (if there is no 911 street address, then the latitude/longitude coordinates shall be provided). In accordance with requirements of Subsection E of this Section, the plan shall also indicate how the PWS will alternate routine sampling between all of the approved POC sampling sites.

B. - D. ...

E. Unless the state health officer specifies otherwise, the public water supply shall collect routine samples at regular time intervals throughout the month and shall alternate routine sampling between all of the approved POC sites. Routine samples shall not be collected from the same POC more than once per month.

F. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(8)(13) and 40:5(2)(3)(5)(6)(17)(20).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1333 (June 2002), amended LR 39:

**Chapter 11. Surface Water Treatment Rule  
Subchapter A. General Requirements and Definitions  
§1102. Relationship with this Part**

A. In those instances where the requirements of this Chapter are stricter than or conflict with the requirements of this Part generally, a public water system utilizing surface water or ground water under the direct influence of surface water (GWUDISW) shall comply with the requirements of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4 (A)(8)(13) and R.S. 40:5 (2)(3)(5)(6)(17)(20).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 39:

**§1105. Analytical Requirements**

A. Analysis for total coliform, fecal coliform, or HPC which may be required under this Chapter shall be conducted by a laboratory certified by DHH to do such analysis. Until laboratory certification criteria are developed, laboratories certified for total coliform analysis by DHH are deemed certified for fecal coliform and HPC analysis.

B. - B.3. ...

C. Public water systems shall conduct analysis for applicable residual disinfectant concentrations in accordance with one of the analytical methods in Table 1.

Table 1				
Residual	Methodology	Standard Methods <sup>1</sup>	ASTM Methods <sup>2</sup>	Other Methods
	Amperometric Titration	4500-CI D, 4500-CI D-00	D 1253-03	
	DPD Ferrous Titrimetric	4500-CI F, 4500-CI F-00		
	DPD Colorimetric	4500-CI G, 4500-CI G-00		
	Syringaldazine (FACTS)	4500-CI H, 4500-CI H-00		
	On-line Chlorine Analyzer			EPA 334.0 <sup>3</sup>
	Amperometric Sensor			ChloroSense <sup>4</sup>
	Total Chlorine	Amperometric Titration	4500-CI D, 4500-CI D-00	D 1253-03
Amperometric Titration (low level measurement)		4500-CI E, 4500-CI E-00		
DPD Ferrous Titrimetric		4500-CI F, 4500-CI F-00		
DPD Colorimetric		4500-CI G, 4500-CI G-00		
Iodometric Electrode		4500-CI I, 4500-CI I-00		
On-line Chlorine Analyzer				EPA 334.0 <sup>3</sup>
Amperometric Sensor				ChloroSense <sup>4</sup>
Chlorine Dioxide	Amperometric Titration	4500-CIO <sub>2</sub> C		
	DPD Method	4500-CIO <sub>2</sub> D		
	Amperometric Titration II	4500-CIO <sub>2</sub> E, 4500-CIO <sub>2</sub> E-00		
	Lissamine Green Spectrophotometric			EPA 327.0 Rev 1.1 <sup>5</sup>
Ozone	Indigo Method	4500-O <sub>3</sub> B, 4500-O <sub>3</sub> B-97		

1. All the listed methods are contained in the 18th, 19th, 20th, 21st, and 22nd Editions of *Standard Methods for the Examination of Water and Wastewater*; the cited methods published in any of these editions may be used.

2. *Annual Book of ASTM Standards*, Vol. 11.01, 2004; ASTM International; any year containing the cited version of the method may be used. Copies of this method may be obtained from ASTM International, 100 Barr Harbor Drive, P.O. Box C700 West Conshohocken, PA 19428-2959.

3. EPA Method 334.0, "Determination of Residual Chlorine in Drinking Water Using an On-line Chlorine Analyzer," August 2009. EPA 815-B-09-013, available at [http://epa.gov/safewater/methods/analyticalmethods\\_ogwdw.html](http://epa.gov/safewater/methods/analyticalmethods_ogwdw.html).

4. ChloroSense. "Measurement of Free and Total Chlorine in Drinking Water by Palintest ChloroSense," September 2009, available at <http://www.nemi.gov> or from Palintest Ltd, 21 Kenton Lands Road, P.O. Box 18395, Erlanger, KY 41018.

5. EPA Method 327.0, Revision 1.1, "Determination of Chlorine Dioxide and Chlorite Ion in Drinking Water Using Lissamine Green B and Horseradish Peroxidase with Detection by Visible Spectrophotometry," USEPA, May 2005, EPA 815-R-05-008, available online at <http://www.epa.gov/safewater/methods/sourcalt.html>.

D. - E.1. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(8)(13) and 40:5(5)(6)(17)(20).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1337 (June 2002), amended LR 28:2516 (December 2002), LR 39:

### **Subchapter B. Treatment Technique Requirements and Performance Standards**

#### **§1117. Non-Filtering Systems**

A. - C.1.b. ...

2. To avoid filtration, the system shall maintain minimum disinfectant residual concentrations in accordance with the requirements of §355 and §357 of this Part. Performance standards shall be as presented in §1119.B and C of this Chapter.

3. - 3.a. ...

b. an automatic shut off of delivery of water to the distribution system when the disinfectant residual level drops below 0.5 mg/l free chlorine residual or 0.5 mg/l chloramine residual (measured as total chlorine).

D. - D.7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(8)(13) and 40:5(2)(3)(5)(6)(17)(20).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1341 (June 2002), amended LR 28:2520 (December 2002), LR 35:1242 (July 2009), LR 39:

#### **§1119. Disinfection Performance Standards**

A. ...

B. Except as otherwise specified by this Section and Chapter, disinfection treatment shall comply with the minimum standards and requirements set forth in §355.A and §357 of this Part.

C. - C.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(8)(13) and 40:5(2)(3)(5)(6)(17)(20).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1341 (June 2002), amended LR 28:2522 (December 2002), LR 35:1242 (July 2009), amended LR 39:

### **Subchapter C. Monitoring Requirements**

#### **§1125. Disinfection Monitoring**

A. ...

B. Disinfectant Residual Monitoring at Plant. To determine compliance with the performance standards specified in §1115 or 1119 of this Chapter, the disinfectant residual concentrations of the water being delivered to the distribution system shall be measured and recorded continuously. The accuracy of disinfectant measurements obtained from continuous disinfectant monitors shall be validated at least weekly in accord with §1109.B or C, as

applicable, of this Chapter. If there is a failure of continuous disinfectant residual monitoring equipment, grab sampling every two hours shall be conducted in lieu of continuous monitoring, but for no more than five working days following the failure of the equipment. Failure to have the continuous monitoring equipment replaced or repaired and put back into continuous service following the five working days allowed herein shall be deemed to constitute a violation of this Chapter. Systems shall maintain the results of disinfectant residual monitoring for at least 10 years.

C. Small System Disinfectant Residual Monitoring at Plant. Suppliers serving fewer than 3,300 people may collect and analyze grab samples of the water being delivered to the distribution system for disinfectant residual determination each day in lieu of the continuous monitoring, in accordance with Table 4 of this Chapter, provided that any time the residual disinfectant falls below 0.5 mg/l free chlorine or 0.5 mg/l chloramine residual (measured as total chlorine), the supplier shall take a grab sample every two hours until the residual concentrations is equal to or greater than 0.5 mg/l free chlorine or 0.5 mg/l chloramine residual (measured as total chlorine).

\* \* \*

D. Disinfectant Residual Monitoring in Distribution System. The residual disinfectant concentrations in the distribution system shall be measured, recorded, and maintained in accordance with §367.B, C, D and E of this Part. A monitoring plan shall be developed, submitted, reviewed, and approved in accordance with §367.E of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(8)(13) and R.S. 40:5(2)(3)(5)(6)(17)(20).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1342 (June 2002), amended LR 28:2523 (December 2002), LR 35:1243 (July 2009), LR 39:

### **Subchapter E. Reporting**

#### **§1133. DHH Notification**

A. - A.4. ...

5. the disinfectant residual measured from any sample collected from water being delivered to the distribution system is found to be less than 0.5 mg/l free chlorine or 0.5 mg/l chloramine residual (measured as total chlorine). The notification shall indicate whether the disinfectant residual was restored to at least 0.5 mg/l free chlorine or 0.5 mg/l chloramine residual (measured as total chlorine) within 4 hours;

A.6. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(8)(13) and 40:5(2)(3)(5)(6)(17)(20).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:2525 (December 2002), amended LR 35:1244 (July 2009), LR 39:

#### **§1135. Monthly Report**

A. - B.5. ...

C. Disinfection Monitoring Results. The monthly report shall include the following disinfection monitoring results.

1. The date and duration of each instance when the disinfectant residual in water supplied to the distribution system is less than 0.5 mg/l free chlorine or 0.5 mg/l chloramine residual (measured as total chlorine) and when the DHH was notified of the occurrence.

2. The following information on samples taken from the distribution system:

a. the number of samples where the disinfectant residual is measured; and

b. the number of measurements where the disinfectant residual is less than 0.5 mg/l free chlorine or 0.5 mg/l chloramine residual (measured as total chlorine).

D. - F.2.a. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(8)(13) and R.S. 40:5(2)(3)(5)(6)(17)(20).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:2526 (December 2002), amended LR 35:1244 (July 2009), LR 39:

#### **Subchapter F. Public Notification**

#### **§1139. Consumer Notification**

A. - B. ...

1. an event occurs which may affect the ability of the treatment plant to produce safe, potable water as specified under §1133.A.7 of this Chapter;

2. a waterborne disease outbreak occurs as specified under §1133.A.8 of this Chapter;

B.3. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(8)(13) and R.S. 40:5(2)(3)(5)(6)(17)(20).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:2527 (December 2002), amended LR 35:485 (March 2009), LR 35:1246 (July 2009), LR 39:

#### **Chapter 15. Approved Chemical Laboratories/Drinking Water**

#### **Subchapter A. Definitions and General Requirements**

#### **§1503. General Requirements**

A. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(8)(13) and 40:5(2)(3)(5)(6)(17)(20).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 30:1199 (June 2004), amended LR 39:

Interested persons may submit written comments to Jake Causey, Chief Engineer, Engineering Services Section, Office of Public Health, P.O. Box 4489, Baton Rouge, LA 70821-4489. He is responsible for responding to inquiries regarding this Emergency Rule.

Kathy H. Kliebert  
Secretary

1311#028

#### **DECLARATION OF EMERGENCY**

#### **Department of Wildlife and Fisheries Wildlife and Fisheries Commission**

#### **2013-14 Area 7 Deer Seasons**

In accordance with the emergency provisions of R.S. 49953 of the Administrative Procedure Act, and under the authority of R.S. 56:115 and 116, the Wildlife and Fisheries Commission hereby adopts the following Emergency Rule.

The season dates for Area 7 deer hunting, with firearms, still hunt only, is presently scheduled as follows:

October 19- 20, 2013 (either-sex);

October 21-November 1, 2013 (bucks only);

November 16-17, 2013 (either-sex);

November 29-December 1, 2013 (either-sex).

During the season setting process, it was the intent of LDWF to include the dates of November 9-15 and November 18-28 in the "bucks only" segment of this season. However, these dates were mistakenly left out of the 2013 Notice of Intent, and thus the *Louisiana Register*. In order to remain consistent with past season lengths and to provide intended additional hunting opportunities during the month of November, LDWF is requesting that the dates of November 9-15 and November 18-28 be included in this year's season dates for deer hunting, with firearms, bucks only, still hunt only in Area 7.

Therefore, the Wildlife and Fisheries Commission hereby adopts adding the following dates for deer hunting, with firearms, bucks only, still hunt only, in Area 7:

November 9-15, 2013;

November 18-28, 2013.

This action must be taken by Declaration of Emergency since the commission's season date Rule has already been submitted to the legislative leadership and the *Louisiana Register*, and insufficient time remains to make these changes via standard rulemaking prior to the opening dates of these seasons.

Billy Broussard  
Vice Chairman

1311#054

#### **DECLARATION OF EMERGENCY**

#### **Department of Wildlife and Fisheries Wildlife and Fisheries Commission**

#### **Deer Seasons on Kisatchie National Forest**

In accordance with the emergency provisions of R.S. 49:953 of the Administrative Procedure Act, and under the authority of R.S. 56:115 and 116, the Wildlife and Fisheries Commission hereby adopts the following Emergency Rule:

The season dates for deer hunting, with firearms, bucks only, still hunt only, is presently scheduled for Oct 28, November 2-21, November 30-December 1, and December 14-29, and was based on a November with four weekends. However, this year November has five weekends and Thanksgiving is November 28. In order to provide additional hunting opportunities during the Thanksgiving week holidays, the U.S. Forest Service has requested the additional week of November 22-28 be included in this year's season dates for deer hunting, with modern firearms, bucks only, still hunt only on the following described areas of Kisatchie National Forest: Catahoula (Grant and Rapides Parishes), Winn (Winn, Grant and Natchitoches parishes), Kisatchie Ranger Districts (Natchitoches Parish), Evangeline

unit of the Calcasieu ranger district (Rapides Parish), and the Vernon unit of the Calcasieu ranger district (Vernon Parish, excluding Fort Polk/Vernon WMA).

Therefore, the Wildlife and Fisheries Commission hereby adopts adding the following dates for deer hunting, firearms, bucks only, still hunt only, on Kisatchie National Forest, within the area noted herein: November 22-28, 2013.

This action must be taken by Declaration of Emergency since the commission's season date rule has already been submitted to the legislative leadership and the Louisiana Register, and insufficient time remains to make these changes via standard rulemaking prior to the opening dates of these seasons.

Billy Broussard  
Vice Chairman

1311#053

## DECLARATION OF EMERGENCY

### Department of Wildlife and Fisheries Wildlife and Fisheries Commission

#### Duck Season

In accordance with the emergency provisions of R.S. 49:953 of the Administrative Procedure Act, and under the authority of R.S. 56:115, the Secretary of the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission hereby adopts the following emergency rule.

The hunting season for ducks, coots and geese during the 2013-2014 hunting season shall be as follows:

Ducks and Coots: 60 days

Coastal Zone: November 9-Dec. 1

December 14-January 19

West Zone: November 16-December 15

December 21 - January 19

East Zone: November 23-December 8

(Including Catahoula Lake) December 14 - January 26

Youth Waterfowl Weekend-November 2-3 in the Coastal Zone, Nov. 9 and Jan. 25 in the West Zone, November 16 and Feb. 1 in East Zone.

Daily Bag Limits: The daily bag limit on ducks is 6 and may include no more than 4 mallards (no more than 2 of which may be females), 2 canvasback, 1 mottled duck, 1 black duck, 3 wood ducks, 3 scaup, 2 redheads, and 2 pintails.

Daily bag limit on coots is 15.

Mergansers-The daily bag limit for mergansers is 5, only 2 of which may be hooded mergansers. Merganser limits are in addition to the daily bag limit for ducks.

Possession Limit-The possession limit on ducks, coots and mergansers is three times the daily bag limit.

Geese:

Light Geese (Snow, Blue and Ross') and White-Fronted Geese

Coastal Zone: November 9-December 1

(74 days) December 14-February 2

West Zone: November 16-December 15

(74 days) December 21 - February 2

East Zone: November 9-December 8

(74 days) December 14-January 26

Daily bag limit on light geese (snow, blue and Ross'):

20

Possession limit on light geese (snow, blue and Ross'):

Daily Limit on white-fronted geese: 2

Possession Limit on white-fronted geese: 6

NOTE: During the open Canada goose season, the daily bag limit is 3 dark geese (White-fronted and Canada) no more than 2 of which may be White-fronted geese.

Canada Geese: Closed in the Area Described Below

Coastal Zone: November 9-December 1

(72 days) December 14 - January 31

West Zone: November 16-December 15

(72 days) December 21-January 31

East Zone: November 9-December 8

(74 days) December 14-January 26

Daily Limit on Canada geese: 3 in aggregate with White-fronts

Possession limit on Canada geese: 9

NOTE: During the open Canada goose season, the daily bag limit is 3 dark geese (White-fronted and Canada) no more than 2 of which may be White-fronted geese.

The Canada goose Season will be open statewide except for a portion of southwest Louisiana. The closed area is described as follows: Beginning at the Texas State Line, proceeding east along Hwy. 82 to the Calcasieu Ship Channel, then north along the Calcasieu Ship Channel to its junction with the Intracoastal Canal, then east along the Intracoastal Canal to its juncture with LA Hwy. 82, then south along LA Hwy. 82 to its juncture with Parish Road 3147, then south and east along Parish Road 3147 to Freshwater Bayou Canal, then south to the Gulf of Mexico, then west along the shoreline of the Gulf of Mexico to the Texas State Line, then north to the point of beginning at LA Hwy. 82.

Conservation Order for Light Geese (Snow, Blue and Ross's):

Coastal Zone: December 2-December 13

February 3-March 2

West Zone: December 16 - December 20

February 3-March 2

East Zone: December 9-December 13

January 27-March 2

Only snow, blue and Ross's geese may be taken under the terms of the Conservation Order, which allows the use of electronic calls and unplugged shotguns and eliminates the daily bag and possession limits. During the Conservation Order, shooting hours begins one-half hour before sunrise and extends until one-half hour after sunset.

Rails: November 9-January 1

King and Clapper: Daily bag limit 15 in the aggregate, Possession 45.

Sora and Virginia: Daily bag 25 in the aggregate and possession 75.

Gallinules: November 9-January 1

Daily bag limit 15, Possession limit 45

Snipe:

Coastal Zone: November 2-December 1

December 14-February 28

West Zone: November 9 - December 15  
December 21 - February 28  
East Zone: November 9-December 8  
December 14-February 28

Daily bag limit 8, Possession limit 24

Shooting Hours: One-half hour before sunrise to sunset, except at the Spanish Lake Recreation Area in Iberia Parish where shooting hours, including the Conservation Order, end at 2 p.m.

Extended Falconry Seasons for Rails and Gallinules:

Statewide: November 4 - February 2

(16 days of the total season lengths for rails, gallinules and extended falconry seasons were used during the September teal season.)

Extended Falconry Seasons For Ducks:

Coastal Zone: November 4-January 31

West Zone: November 4-February 2

East Zone: November 4-February 2

A Declaration of Emergency is necessary because the U.S. Fish and Wildlife Service establishes the framework for all migratory species. In order for Louisiana to provide hunting opportunities to the 200,000 sportsmen, selection of season dates, bag limits and shooting hours must be established and presented to the U.S. Fish and Wildlife Service immediately.

The aforementioned season dates, bag limits and shooting hours will become effective November 1, 2013 and extend through one-half hour after sunset on March 2, 2014.

Billy Broussard  
Vice Chairman

1311#051

## **DECLARATION OF EMERGENCY**

### **Department of Wildlife and Fisheries Wildlife and Fisheries Commission**

#### **Gray Triggerfish Season Closure**

The recreational season for the harvest of gray triggerfish in Louisiana state waters has previously been set to open on January 1, 2013. The established season for the recreational as outlined in LAC 76:VII.335 is open year round. The recreational season is hereby modified to be closed effective from 12:01 a.m. on October 15, 2013 and set to reopen at 12:01 a.m. on January 1, 2014. The secretary has been informed that the recreational season for gray triggerfish in the federal waters of the Gulf of Mexico off the coast of Louisiana will close at 12:01 a.m. on October 15, 2013, and will remain closed until 12:01 a.m. January 1, 2014.

In order to enact regulations in a timely manner so as to have compatible regulations in place in Louisiana waters to coincide with the recreational season closure set forth by NOAA Fisheries, it is necessary that emergency rules be enacted.

In accordance with the emergency provisions of R.S. 49:953, the Administrative Procedure Act, R.S. 49:967 which allows the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission to use emergency procedures to set finfish seasons, R.S. 56:326.3 which provides that the Wildlife and Fisheries Commission may set

seasons for saltwater finfish, and the authority given to the secretary of the department by the commission in LAC 76:VII.335.G.5 and by the commission in its resolution of January 3, 2013 to modify reef fish seasons in Louisiana state waters when notified by the NOAA Fisheries or he deems necessary, the secretary hereby declares:

The recreational fishery for gray triggerfish in Louisiana waters will close at 12:01 a.m. on October 15, 2013, and remain closed until 12:01 a.m. on January 1, 2014 at which time the recreational fishery for gray triggerfish will reopen. Effective with this closure, no person shall recreationally harvest or possess gray triggerfish whether within or without Louisiana waters.

The secretary has been notified by NOAA Fisheries that the recreational season for gray triggerfish in federal waters of the Gulf of Mexico off of Louisiana will close from October 15, 2013 until 12:01 a.m. January 1, 2014, at which time the season in federal waters will reopen.

Robert Barham  
Secretary

1311#010

## **DECLARATION OF EMERGENCY**

### **Department of Wildlife and Fisheries Wildlife and Fisheries Commission**

#### **King Mackerel Commercial Reopening**

In accordance with the emergency provisions of R.S. 49:953, which allows the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission to use emergency procedures to set finfish seasons, R.S. 56:326.3 which provides that the Wildlife and Fisheries Commission may set seasons for saltwater finfish, and the authority given to the secretary of the department, by the commission in its resolution of January 3, 2013, to modify the 2013-14 commercial king mackerel season in Louisiana state waters when he is informed that the season for the Gulf of Mexico has been modified, the secretary hereby declares:

Effective 12:01 a.m., November 1, 2013, the commercial fishery for king mackerel in Louisiana waters will re-open and remain open until 12:01 a.m., on November 3, 2013 at which time the commercial fishery for king mackerel will close and remain closed through June 30, 2014. Nothing herein shall preclude the legal harvest of king mackerel by legally licensed recreational fisherman. Effective with the above closure period, no person shall commercially harvest, possess, purchase, barter, trade, sell or attempt to purchase, barter, trade or sell king mackerel within or without Louisiana waters. Effective with the above closure period, no person shall possess king mackerel in excess of a daily bag limit within or without Louisiana waters. The prohibition on sale/purchase of king mackerel during the closure does not apply to king mackerel that were legally harvested, landed ashore, and sold prior to the effective date of the closure and were held in cold storage by a dealer or processor provided appropriate records in accordance with R.S. 56:306.5 and 56:306.6 are properly maintained.

The secretary has been notified by National Marine Fisheries Service that the commercial king mackerel season in federal waters of the Gulf of Mexico will re-open at 12:01 a.m., November 1, 2013 until 12:01 a.m., on November 3, 2013 at which time the commercial fishery for king mackerel will close and remain closed through June 30, 2014.

Robert Barham  
Secretary

1311#011

## **DECLARATION OF EMERGENCY**

### **Department of Wildlife and Fisheries Wildlife and Fisheries Commission**

#### **Oyster Season Closure—Sister Lake**

In accordance with the emergency provisions of Louisiana Revised Statutes (R.S.) 49:953, under the authority of R.S. 56:433, and under the authority of a Declaration of Emergency passed by the Wildlife and Fisheries Commission on August 1, 2013 which authorized the secretary of the Department of Wildlife and Fisheries to take emergency action if oyster resources and/or reefs are being adversely impacted, notice is hereby given that the secretary of Wildlife and Fisheries hereby declares that the 2013/2014 oyster season in the Sister Lake Public Oyster Seed Reservation shall close at one-half hour after sunset on Friday, October 25, 2013.

Harvest pressure during the season has significantly reduced oyster stocks and continued commercial harvest may threaten the long-term sustainability of remaining oyster resources in these areas. Additionally, the presence of newly-settled oysters (spat) has been documented in biological samples from reefs within Sister Lake. Protection of these remaining oyster reef resources and young oysters from injury is in the best interest of the public oyster seed reservation.

Notice of any opening, delaying, or closing of a season will be provided by public notice at least 72 hours prior to such action, unless such closure is ordered by the Louisiana Department of Health and Hospitals for public health concerns.

Robert J. Barham  
Secretary

1311#009

## **DECLARATION OF EMERGENCY**

### **Department of Wildlife and Fisheries Wildlife and Fisheries Commission**

#### **Recreational and Commercial Fisheries Closure**

In accordance with the emergency provisions of R.S. 49:953 of the Administrative Procedure Act, and under the authority of R.S. 56:6.1, the Wildlife and Fisheries

Commission hereby closes all commercial fishing, effective immediately November 7, 2013 in the following areas:

Those waters north of 28 degrees 56 minutes 30 seconds north latitude and south of 28 degrees 59 minutes 30 seconds north latitude from the eastern shore of Southwest Pass of the Mississippi River eastward to a line beginning at 28 degrees 59 minutes 30 seconds north latitude and -89 degrees 19 minutes 50 seconds west longitude and ending at 28 degrees 56 minutes 30 seconds north latitude and -89 degrees 23 minutes 00 seconds west longitude; and, those waters north of 29 degrees 02 minutes 00 seconds north latitude and south of 29 degrees 02 minutes 20 seconds north latitude from the western shore of South Pass of the Mississippi River westward to -89 degrees 15 minutes 25 seconds west longitude; and, those waters north of 28 degrees 59 minutes 40 seconds north latitude and south of 29 degrees 02 minutes 00 seconds north latitude from the western shore of South Pass of the Mississippi River westward to -89 degrees 15 minutes 25 seconds west longitude and southeastward along a line beginning at 29 degrees 02 minutes 00 seconds north latitude and -89 degrees 15 minutes 25 seconds west longitude and ending at 28 degrees 59 minutes 40 seconds north latitude and -89 degrees 10 minutes 15 seconds west longitude; and, those waters west of the western shore of South Pass of the Mississippi River south of 28 degrees 59 minutes 40 seconds north latitude bounded by the following coordinates: 1) 28 degrees 59 minutes 15 seconds north latitude and -89 degrees 08 minutes 15 seconds west longitude, 2) 28 degrees 58 minutes 20 seconds north latitude and -89 degrees 10 minutes 00 seconds west longitude, 3) 28 degrees 59 minutes 01 seconds north latitude and -89 degrees 11 minutes 00 seconds west longitude, 4) 28 degrees 59 minutes 40 seconds north latitude and -89 degrees 10 minutes 15 seconds west longitude; and, those waters east of the eastern shore of South Pass of the Mississippi River and south of 29 degrees 01 minutes 50 seconds north latitude eastward to a line beginning at 29 degrees 01 minutes 50 seconds north latitude and -89 degrees 07 minutes 20 seconds west longitude and ending at 28 degrees 59 minutes 35 seconds north latitude and -89 degrees 08 minutes 00 seconds west longitude; and, those waters adjacent to but not including Northeast Pass and Southeast Pass of the Mississippi River and bounded by the following coordinates: 1) 29 degrees 08 minutes 35 seconds north latitude and -89 degrees 04 minutes 20 seconds west longitude, 2) 29 degrees 08 minutes 15 seconds north latitude and -89 degrees 02 minutes 10 seconds west longitude, 3) 29 degrees 04 minutes 50 seconds north latitude and -89 degrees 04 minutes 10 seconds west longitude, 4) 29 degrees 05 minutes 30 seconds north latitude and -89 degrees 05 minutes 10 seconds west longitude; and, those waters south and west of Pass a Loutre of the Mississippi River and east of -89 degrees 05 minutes 35 seconds west longitude bounded by the following coordinates: 1) 29 degrees 11 minutes 25 seconds north latitude and -89 degrees 03 minutes 30 seconds west longitude, 2) 29 degrees 11 minutes 00 seconds north latitude and -89 degrees 02 minutes 25 seconds west longitude, 3) 29 degrees 09 minutes 00

seconds north latitude and -89 degrees 05 minutes 35 seconds west longitude, 4) 29 degrees 11 minutes 00 seconds north latitude and -89 degrees 05 minutes 35 seconds west longitude; and, those waters south of North Pass of the Mississippi River bounded by the following coordinates: 1) 29 degrees 11 minutes 35 seconds north latitude and -89 degrees 02 minutes 55 seconds west longitude, 2) 29 degrees 12 minutes 35 seconds north latitude and -89 degrees 01 minutes 05 seconds west longitude, 3) 29 degrees 11 minutes 35 seconds north latitude and -89 degrees 01 minutes 10 seconds west longitude, 4) 29 degrees 11 minutes 10 seconds north latitude and -89 degrees 02 minutes 00 seconds west longitude; and, those state inside and outside waters adjacent to Grand Terre Island bounded by the following coordinates: 1) 29 degrees 18 minutes 20 seconds north latitude and -89 degrees 54 minutes 50 seconds west longitude, 2) 29 degrees 17 minutes 10 seconds north latitude and -89 degrees 53 minutes 50 seconds west longitude, 3) 29 degrees 15 minutes 40 seconds north latitude and -89 degrees 56 minutes 00 seconds west longitude, 4) 29 degrees 17 minutes 00 seconds north latitude and -89 degrees 57 minutes 20 seconds west longitude; and, those state inside waters in the upper Barataria Basin north of 29 degrees 26 minutes 00 seconds north latitude and south of 29 degrees 29 minutes 00 seconds north latitude from -89 degrees 50 minutes 00 seconds west longitude westward to -89 degrees 57 minutes 00 seconds west longitude; and, that portion of state outside waters seaward a distance of one mile from the inside/outside shrimp line from the western shore of Caminada Pass at -90 degrees 02 minutes 46.597 seconds west longitude westward to the eastern shore of Belle Pass at -90 degrees 13 minutes 30 seconds west longitude; and that portion of state outside waters seaward a distance of one-half mile from the shoreline from the southwestern shore of Grand Terre Island 2 at -89 degrees 54 minutes 04 seconds west longitude; thence eastward along the shoreline to the southeastern shore of Grand Terre Island 2 at -89 degrees 51 minutes 39 seconds west longitude; thence eastward along 29 degrees 18 minutes 46 seconds north latitude to -89 degrees 51 minutes 19 seconds west longitude.

Recreational fishing is open in all state inside and outside territorial waters, except in the following areas, where only recreational angling, charter boat angling and the harvest of bait by wholesale/retail seafood dealers who hold a special bait dealers permit and who harvest bait for sale to recreational fishermen exclusively, pursuant to the provisions of LAC 76:VII.329 is allowed: those state inside

and outside waters adjacent to Grand Terre Island bounded by the following coordinates: 1) 29 degrees 18 minutes 20 seconds north latitude and -89 degrees 54 minutes 50 seconds west longitude, 2) 29 degrees 17 minutes 10 seconds north latitude and -89 degrees 53 minutes 50 seconds west longitude, 3) 29 degrees 15 minutes 40 seconds north latitude and -89 degrees 56 minutes 00 seconds west longitude, 4) 29 degrees 17 minutes 00 seconds north latitude and -89 degrees 57 minutes 20 seconds west longitude; and, those state inside waters in the upper Barataria Basin north of 29 degrees 26 minutes 00 seconds north latitude and south of 29 degrees 29 minutes 00 seconds north latitude from -89 degrees 50 minutes 00 seconds west longitude westward to -89 degrees 57 minutes 00 seconds west longitude; and, that portion of state outside waters seaward a distance of one mile from the inside/outside shrimp line from western shore of Caminada Pass at -90 degrees 02 minutes 46.597 seconds west longitude westward to the eastern shore of Belle Pass at -90 degrees 13 minutes 30 seconds west longitude; and, those state outside waters seaward a distance of one-half mile from the shoreline from the southwestern shore of Grand Terre Island 2 at -89 degrees 54 minutes 04 seconds west longitude; thence eastward along the shoreline to the southeastern shore of Grand Terre Island 2 at -89 degrees 51 minutes 39 seconds west longitude; thence eastward along 29 degrees 18 minutes 46 seconds north latitude to -89 degrees 51 minutes 19 seconds west longitude.

The Deepwater Horizon drilling rig accident has resulted in a significant release of hydrocarbon pollutants into the waters offshore of southeast Louisiana and these pollutants have the potential to impact fish and other aquatic life in portions of these coastal waters. Efforts have been made and are continuing to be made to minimize the potential threats to fish and other aquatic life.

The Commission hereby grants authority to the Secretary of the Department of Wildlife and Fisheries to open, close, reopen-reclose, broaden or otherwise modify the areas closed and opened to fishing if biological, environmental and technical data indicate the need to do so, or as needed to effectively implement the provisions herein.

Billy Broussard  
Vice Chairman

1311#052

# Rules

## RULE

### Department of Agriculture and Forestry Office of Agricultural and Environmental Sciences Agricultural Chemistry and Seed Commission

Seeds (LAC 7:XIII.145, 741, and 767-779)

Editor's Note: The following Sections are being repromulgated to correct a typographical and submission error. As a result, Sections 145 and 165 (now Section 741) will be repromulgated and the current Sections 741-765 will be renumbered in the LAC. The original Rule can be viewed in the October 20, 2013 edition of the *Louisiana Register* on pages 2701-2736.

The Agricultural Chemistry and Seed Commission, the successor to the Seed Commission by Act 26 of 2013, is repromulgating the rules and regulations of the Seed Commission to bring the rules and regulations under the jurisdiction of the Agricultural Chemistry and Seed Commission, to maintain them in full force and effect, simplify the format to make it easier for persons interested in the rules and regulations to find provisions pertinent to their interests, and to provide appropriate space for the numbering of future rules and regulations in accordance with the format utilized by the Office of the State Register. No change in the wording of any rule or regulations is being made by this repromulgation except to change the numbering of any Section referenced in any other Section to coincide with the new number given to the referenced Section.

To aid in the transition, two tables are provided below. Table 1 lists the old Section numbers of Part XIII and the new Section numbers opposite the old numbers. Table 2 shows the new Sections numbers and then the old Section numbers opposite the new numbers. These tables are provided as a convenience and do not constitute a new part of these rules and regulations. As an added convenience, the old Section number is provided in the heading of each Section.

### Title 7 AGRICULTURE AND ANIMALS Part XIII. Seeds

#### Chapter 1. General Provisions Subchapter A. Definitions; Administrative Matters §145. Noxious Weeds

A. The following weeds, together with the specific limitation shown for each weed, are designated as noxious weeds.

Limitations on Weed Seed in Certified Seed	(By Pounds)
1. Tropical Soda Apple ( <i>Solanum viarum</i> Dunal)	Prohibited
2. Field Bindweed ( <i>Convolvulus arvensis</i> )	Prohibited
3. Hedge Bindweed ( <i>Convolvulus sepium</i> )	Prohibited
4. Nutgrass ( <i>Cyperus esculentus</i> , <i>C. rotundus</i> )	Prohibited
5. Itchgrass ( <i>Rottboellia exaltata</i> L., <i>R. cochinchinensis</i> )	Prohibited
6. Balloonvine ( <i>Cardiospermum halicacabum</i> )	Prohibited
7. Cocklebur ( <i>Xanthium</i> spp.)	5 per lb.

Limitations on Weed Seed in Certified Seed	(By Pounds)
8. Spearhead ( <i>Rhynchospora</i> spp.)	5 per lb.
9. Purple Moonflower ( <i>Ipomoea turbinata</i> )	9 per lb.
10. Red Rice ( <i>Oryza sativa</i> var.)	9 per lb.
11. Wild Onion and/or Wild Garlic ( <i>Allium</i> spp.)	9 per lb.
12. Canada Thistle ( <i>Cirsium arvense</i> )	100 per lb.
13. Dodder ( <i>Cuscuta</i> spp.)	100 per lb.
14. Johnsongrass ( <i>Sorghum halepense</i> )	100 per lb.
15. Quackgrass ( <i>Agropyron repens</i> )	100 per lb.
16. Russian Knapweed ( <i>Centaurea repens</i> )	100 per lb.
17. Blueweed, Texas ( <i>Helianthus ciliari</i> )	200 per lb.
18. Bermuda Grass ( <i>Cynodon dactylon</i> )	300 per lb.
19. Bracted Plantain ( <i>Plantago aristata</i> )	300 per lb.
20. Buckhorn Plantain ( <i>Plantago lanceolata</i> )	300 per lb.
21. Cheat ( <i>Bromus secalinus</i> )	300 per lb.
22. Hairy Chess ( <i>Bromus commutatus</i> )	300 per lb.
23. Corncockle ( <i>Agrostemma githago</i> )	300 per lb.
24. Darnel ( <i>Lolium temulentum</i> )	300 per lb.
25. Dock ( <i>Rumex</i> spp.)	300 per lb.
26. Horsenettle ( <i>Solanum carolinense</i> )	300 per lb.
27. Purple Nightshade ( <i>Solanum elaeagnifolium</i> )	300 per lb.
28. Sheep Sorrel ( <i>Rumex acetosella</i> )	300 per lb.
29. Morning Glory ( <i>Ipomoea</i> spp.)	18 per lb.
30. Wild Poinsettia ( <i>Euphorbia heterophylla</i> , <i>E. dentata</i> )	18 per lb.
31. Wild Mustard and Wild Turnips ( <i>Brassica</i> spp.)	300 per lb.
32. Hemp Sesbania, Coffee Bean, Tall Indigo ( <i>Sesbania exaltata</i> )	300 per lb.
33. Curly Indigo ( <i>Aeschynomene virginica</i> )	300 per lb.
34. Mexican Weed ( <i>Caperonia castaneaefolia</i> )	300 per lb.
Sum of Total Noxious Weed Seed (Subject to limitation above)	500 per lb.

B. Noxious weed seeds are permitted in seed to be certified, within the limitations specified in §145.A, unless prohibited or otherwise limited under the specific rules for the crop or variety entered for certification. (See §§701-725, 741-765, 781-793, and 811 for limitations on each noxious weed for each crop or variety.)

C. Limitations on noxious weeds (in the field or in seed to be certified), may be more restrictive for a particular crop or variety to be certified than the limitations shown in §145.A above. The limitation on noxious weeds stated in §§701-725, 741-765, 781-793, and 811 shall supersede the limitations shown in §145.A whenever a more restrictive limitation is stated in the specific requirements for the crop or variety.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1431 and R.S. 3:1433.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 8:566 (November 1982), amended LR 9:197 (April 1983), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), LR 14:605 (September 1988), LR 23:1283 (October 1997), amended by the Department of Agriculture and Forestry, Office of the Commissioner, Seed Commission, LR 30:199 (February 2004), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:3059 (November 2013).

**Chapter 7. Certification of Specific Crops/Varieties**

**§741. Cottonseed Seed Certification Standards**

**[Formerly §165]**

**A. Field Standards**

Factor	Breeder	Foundation	Registered	Certified
Isolation**		15 ft.	15 ft.	15 ft.
Other Varieties and Off-Type Plants	None	None	1 Plant per Acre	5 Plants per Acre
Noxious Weeds: Cocklebur	None	5 Plants per Acre	8 Plants per Acre	10 Plants per Acre

\*\*Fields entered for certification must be isolated at least 600 feet from Sea Island cotton, red leaf cotton, or other cottons which vary greatly in plant characteristics from the variety entered for certification, and at least one-half mile from G. barbadense and interspecific hybrids involving G. barbadense.

**B. Handling and Storage Requirements**

1. Ginning. Cottonseed entered in all classes of certification shall be ginned on a thoroughly cleaned, one-variety gin approved by the Department of Agriculture and Forestry prior to ginning seed to be certified. With special permission of the Department of Agriculture and Forestry:

a. cottonseed for all classes of certification may be ginned on thoroughly cleaned, mixed variety gins either with a notarized ginner's agreement provided by the Louisiana Department of Agriculture and Forestry or an inspector of the Louisiana Department of Agriculture and Forestry shall be present if cottonseed for certification is ginned;

b. cottonseed produced for only the certified class may be ginned on a mixed-variety gin if a minimum of three bales are "blown" through the gin prior to catching of the cottonseed to be certified. An inspector of the Louisiana Department of Agriculture and Forestry may be present if cottonseed for certification is ginned under special permission.

2. Delinting. Delinters must conform to the same requirements set forth for ginners. No cottonseed entered for certification may be delinted outside the state of Louisiana except by special permission of the Department of Agriculture and Forestry.

**C. Seed Standards**

Factor	Breeder	Foundation	Registered	Certified
Pure Seed	99.00%	99.00%	99.00%	99.00%
Inert Matter	1.00%	1.00%	1.00%	1.00%
Other Varieties	None	0.03%	0.05%	0.10%
Other Crops	None	None	3 seed/lb.	5 seed/lb.
Noxious Weeds: Cocklebur	None	None	1 seed/2 lbs.	1 seed/2 lbs.
Germination	None	70.00%	70.00%	70.00%

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1433.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, LR 8:570 (November 1982), amended LR 9:199 (April 1983), LR 10:737 (October 1984), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), LR 13:156 (March 1987), repromulgated LR 13:232 (April 1987), amended LR 18:954 (September 1992), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural

and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:3060 (November 2013).

§§767. - 779. Reserved.

Mike Strain, DVM  
Commissioner

1311#049

**RULE**

**Department of Agriculture and Forestry  
Office of the Commissioner**

Fees (LAC 7:XXI.1507)

In accordance with the Administrative Procedure Act (APA), R.S. 49:950 et seq., and the enabling statutes, R.S. 3:3101, and R.S. 3:3107, the commissioner of agriculture and forestry has amended permanent rules to increase the regulatory fee charged to alternative livestock farms from \$50 to \$250 and to eliminate provisions for waiver of fees that are now moot.

Currently, the Department of Agriculture and Forestry issues licenses and renewal of licenses to farm-raised alternative livestock farms for \$50 per license or license renewal. This fee defrays the cost of inspecting the farms and the alternative livestock on the farms, administering alternative livestock related programs and enforcement of laws and regulations governing alternative livestock. The regulatory fee being collected is insufficient to cover the cost of regulating the alternative livestock industry and providing services to the industry and the department does not have budgeted funds from other sources that can be used to continue to subsidize these costs. Without a fee increase the department will have to substantially curtail or cut enforcement and services. Curtailment of enforcement creates a risk, which is not now present, of importation into this state of white-tailed deer or other cervidae that are diseased or may have been exposed to disease. This risk would place both the farm-raised cervidae population and wild population of white-tailed deer at risk and jeopardize both the alternative livestock industry and the wild white-tailed deer hunting industry. Therefore, the regulatory fee increase is necessary to insure that these programs will have adequate funding for the rest of the fiscal year and beyond and to avoid budgetary deficits that are not allowed by law.

**Title 7**

**AGRICULTURE AND ANIMALS**

**Part XXI. Diseases of Animals**

**Chapter 15. Alternative Livestock—Imported Exotic Deer and Imported Exotic Antelope, Elk and Farm-Raised White-Tailed Deer**

**§1507. Fees**

**A. Farm-Raising License Fees**

1. The fee for a new farm-raising license shall be \$250.

2. The farm-raising license renewal fee shall be \$250.

**B. - C.4. ...**

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3101 and R.S. 3:3107.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:282 (February 1998), amended LR 24:1672 (September 1998), LR 39:3060 (November 2013).

Mike Strain, DVM  
Commissioner

1311#048

**RULE**

**Department of Children and Family Services  
Economic Stability Section**

Use of TANF Benefits  
(LAC 67:III.1259 and 5351)

In accordance with the provisions of the Administrative Procedure Act R.S. 49:953 (A), the Department of Children and Family Services (DCFS) has adopted LAC 67:III, Subpart 2 Family Independence Temporary Assistance Program (FITAP), Chapter 12, Subchapter B, Section 1259 and Subpart 13 Kinship Care Subsidy Program (KCSP), Chapter 53, Subchapter B, Section 5351. Adoption is pursuant to the authority granted to the department by Louisiana’s Temporary Assistance for Needy Families (TANF) Block Grant.

Sections 1259 Use of FITAP Benefits and 5351 Use of KCSP Benefits adopt provisions necessary to prevent cash assistance provided under the FITAP and KCSP programs from being used in any electronic benefit transfer (EBT) transaction in a liquor store, gambling casino or gaming establishment, or any retail establishment that provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment purposes, or at any retailer for the purchase of an alcoholic beverage, a tobacco product, or a lottery ticket. Penalties are defined for recipients who are determined to violate these provisions.

The Rule is aimed at preventing TANF transactions at specified locations and for certain types of purchases determined to be inconsistent with the purpose of TANF, which is financial assistance to help pay for the family’s ongoing basic needs, such as food, shelter, and clothing. The Rule is necessary to comply with the Middle Class Tax Relief and Job Creation Act of 2012, Section 4004 (Pub. L. 112–96). Failure to adopt these provisions could result in noncompliance with federal regulations and the imposition of penalties.

This action was made effective by an Emergency Rule dated and effective March 1, 2013.

**Title 67**

**SOCIAL SERVICES**

**Part III. Economic Stability**

**Subpart 2. Family Independence Temporary Assistance Program**

**Chapter 12. Application, Eligibility, and Furnishing Assistance**

**Subchapter B. Conditions of Eligibility**

**§1259. Use of FITAP Benefits**

A. FITAP benefits shall not be used in any electronic benefit transfer transaction in:

1. any liquor store;
2. any gambling casino or gaming establishment; or

3. any retail establishment that provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment purposes.

B. FITAP benefits shall not be used in any electronic benefit transfer transaction at any retailer for the purchase of:

1. an alcoholic beverage as defined in R.S. 14.93.10(3);
2. a tobacco product as defined in R.S. 14.91.6(B); or
3. a lottery ticket as defined in R.S. 47:9002(2).

C. For purposes of this Section, the following definitions and provisions apply.

1. The term *liquor store* is defined as any retail establishment that sells exclusively or primarily intoxicating liquor. It does not include a grocery store that sells both intoxicating liquor and groceries, including staple foods.

2. The terms *gambling casino* and “gaming establishment” do not include a grocery store that sells groceries, including staple foods, and that also offers, or is located within the same building or complex as casino, gambling, or gaming activities, or any other establishment that offers casino, gambling, or gaming activities incidental to the principal purpose of the business.

3. The term *electronic benefit transfer transaction* means the use of a credit or debit card service, automated teller machine, point-of-sale terminal, or access to an online system for the withdrawal of funds or the processing of a payment for merchandise or a service.

D. The FITAP case of a FITAP recipient who is determined to have violated the provisions of this Section shall be closed for the following time periods:

1. 12 months for the first offense;
2. 24 months for the second offense; and
3. permanently for the third offense.

AUTHORITY NOTE: Promulgated in accordance with P.L. 112–96.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Economic Stability Section, LR 39:3061 (November 2013).

**Subpart 13. Kinship Care Subsidy Program (KCSP)  
Chapter 53. Application, Eligibility, and Furnishing Assistance**

**Subchapter B. Conditions of Eligibility**

**§5351. Use of KCSP Benefits**

A. KCSP benefits shall not be used in any electronic benefit transfer transaction in:

1. any liquor store;
2. any gambling casino or gaming establishment; or
3. any retail establishment that provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment purposes.

B. KCSP benefits shall not be used in any electronic benefit transfer transaction at any retailer for the purchase of:

1. an alcoholic beverage as defined in R.S. 14.93.10(3);
2. a tobacco product as defined in R.S. 14.91.6(B); or
3. a lottery ticket as defined in R.S. 47:9002(2).

C. For purposes of this Section, the following definitions and provisions apply.

1. The term *liquor store* is defined as any retail establishment that sells exclusively or primarily intoxicating

liquor. It does not include a grocery store that sells both intoxicating liquor and groceries, including staple foods.

2. The terms *gambling casino* and “gaming establishment” do not include a grocery store that sells groceries, including staple foods, and that also offers, or is located within the same building or complex as casino, gambling, or gaming activities, or any other establishment that offers casino, gambling, or gaming activities incidental to the principal purpose of the business.

3. The term *electronic benefit transfer transaction* means the use of a credit or debit card service, automated teller machine, point-of-sale terminal, or access to an online system for the withdrawal of funds or the processing of a payment for merchandise or a service.

D. The KCSP case of a KCSP recipient who is determined to have violated the provisions of this Section shall be closed for the following time periods:

1. 12 months for the first offense;
2. 24 months for the second offense; and
3. permanently for the third offense.

AUTHORITY NOTE: Promulgated in accordance with P.L. 112-96.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Economic Stability Section, LR 39:3061 (November 2013).

Suzy Sonnier  
Secretary

1311#045

**RULE**

**Department of Civil Service  
Board of Ethics**

**Food and Drink Limit (LAC 52:I.1703)**

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Civil Service, Louisiana Board of Ethics, has amended the rules for the Board of Ethics to bring the rules into compliance with current statutory provisions and section 1115.1(C) of the Code of Governmental Ethics.

**Title 52  
ETHICS**

**Part I. Board of Ethics**

**Chapter 17. Code of Governmental Ethics**

**§1703. Food and Drink Limit**

A. In accordance with R.S. 42:1115.1(C), beginning on July 1, 2013, the limit for food, drink or refreshments provided in R.S. 42:1115.1(A) and (B) is \$57.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1115.1.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 36:304 (February 2010), amended LR 36:1466 (July 2010), LR 38:1951 (August 2012), LR 39:3062 (November 2013).

Kathleen M. Allen  
Administrator

1311#013

**RULE**

**Board of Elementary and Secondary Education**

**Bulletin 126—Charter Schools**

(LAC 28:CXXXIX.103, 303, 306, 307, 503, 507, 511, 517, 519, 701, 1101, 1303, 1503, 1601, 1703, 1903, 1905, 1907, 2105, 2501, 2905, 2911, and 3101)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 126—Charter Schools*: §103, Definitions; §303, BESE Authorizing Responsibilities; §307, Local School Board Duties; §503, Eligibility to Apply for a Type 2 Charter School; §507, Existing Public Schools Converting to Charter Schools; §511, Charter School Application Process; §517, Consideration of Charter Applications and Awarding of Charters by BESE; §519, Local School Board Consideration of Charter Application, Awarding of Charters; §701, Charter School Contract with BESE; §1303, Extension Review; §1503, Charter Renewal Process and Timeline; §1601, School Closure Protocol; §1703, Revocation Proceedings; §1903, Material Amendments for BESE-Authorized Charter Schools; §1905, Non-Material Amendments for BESE-Authorized Charter Schools; §1907, Other Charter Amendments for BESE-Authorized Charter Schools; §2105, Board Member Training for BESE-Authorized Charter Schools; §2501, Qualified and Competent Business Professional; §2905, Criminal History Review; §2911, Evaluation and Assessment; and §3101. The revisions align policy with recent changes to school accountability, streamline and update policies and correct technical errors.

**Title 28  
EDUCATION**

**Part CXXXIX. Bulletin 126—Charter Schools**

**Chapter 1. General Provisions**

**§103. Definitions**

A. - A.2. ...

*Appropriate Technical Infrastructure*—any servers, programs, internet access, and/or management systems that allow user interaction, provide sufficient bandwidth to host courses or online services, and sustain peak periods of usage without a reduction in performance.

*At-Risk Pupil*—any pupil about whom at least one of the following is true:

- i. is eligible to participate in the federal free or reduced lunch program by demonstrating that he meets the income requirements established for participation in the program, not necessarily by participating in the program;
- ii. is under the age of 20 and has been withdrawn from school prior to graduation for not less than one semester;
- iii. is under the age of 20 and has failed to achieve the required score on any portion of the examination required for high school graduation;
- iv. is in the eighth grade or below and is reading two or more grade levels below grade level as determined by one or more of the tests required pursuant to R.S. 17:24.4;

v. has been identified as an exceptional child as defined in R.S. 17:1943, not including gifted and talented; or

vi. is the mother or father of a child.

*BESE and/or Board*—the state *Board* of Elementary and Secondary Education as created by the Louisiana Constitution and the *Louisiana Revised Statutes*.

*Charter*—the agreement and authorization to operate a *charter* school, which includes the *charter* contracts and exhibits, which incorporate the *charter* school application.

*Chartering Authority*—a local school board or the state Board of Elementary and Secondary Education.

*Charter Operator*—the nonprofit corporation or school board authorized to operate a charter school.

*Charter School*—an independent public school that provides a program of elementary and/or secondary education established pursuant to and in accordance with the provisions of the Louisiana *charter school* law to provide a learning environment that will improve pupil achievement.

*Charter School Application*—the proposal submitted to BESE, which includes but is not limited to, responses to questions concerning:

- i. a charter school's education program;
- ii. governance, leadership, and management;
- iii. financial plan; and
- iv. facilities.

*Charter School Law*—Louisiana laws, R.S. 17:3971 et seq., governing the operation of a charter school.

*Core Subject*—shall include those subjects defined as *core subjects* in Bulletin 741.

*Department of Education* or *LDE* or *Department*—the Louisiana *Department of Education*. The *Department of Education* includes the recovery school district, or RSD, where references are made to type 5 charter schools.

*Hearing Officer*—the individual assigned by BESE to perform adjudicatory functions at charter school revocation hearings.

*Instructional and Communication Hardware*—any equipment used to ensure students can access and engage with the educational program (e.g., headphones, wireless air cards, learning management systems, web-based communication tools).

*Instructional Coach*—a parent or guardian, extended adult family member, or other adult designated by the parent or guardian who works in person with each virtual charter school student under the guidance of the Louisiana-licensed professional teacher.

*Local School Board*—any city, parish, or other local education agency.

*Management Organization*—a for-profit company that manages academic, fiscal, and operational services on behalf of boards of directors of BESE-authorized charter schools through contractual agreements.

*Public Service Organization*—any community-based group of 50 or more persons incorporated under the laws of this state that meets all of the following requirements:

i. has a charitable, eleemosynary, or philanthropic purpose; and is qualified as a tax-exempt organization under section 501(c) of the United States *Internal Revenue Code* and is organized for a public purpose.

*State Superintendent*—the superintendent of education, who is the chief administrative officer of the

Louisiana Department of Education, and who shall administer, coordinate, and supervise the activities of the department in accordance with law, regulation, and policy.

*Technical Access*—computer and internet availability sufficient to ensure access for all students.

*Virtual School*—an educational program operated for a minimum of one academic year and covering specified educational learning objectives for the purpose of obtaining a Louisiana certified diploma, the delivery of such a program being through an electronic medium such that the students are not required to be at a specific location in order to receive instruction from a teacher, but instead access instruction remotely through computers and other technology, which may separate the student and teacher by time and space. This does not preclude the ability of said program to host face-to-face meetings, including field trips, extracurricular activities, conferences between the student, parents, and teachers, or any such related events.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3973.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1357 (July 2008), amended LR 37:867 (March 2011), LR 37:2383 (August 2011), LR 38:37 (January 2012), LR 38:750 (March 2012), repromulgated LR 38:1392 (June 2012), amended LR 38:1583 (July 2012), LR 39:3062 (November 2013).

### **Chapter 3. Charter School Authorizers**

#### **§303. BESE Authorizing Responsibilities**

A. BESE, as the authorizer of type 2, type 4, and type 5 charter schools, has the following authorizing responsibilities:

1. to implement a comprehensive application process with fair procedures and rigorous criteria that results in applications recommended for approval that demonstrate strong capacity for establishing and operating a quality charter school;

2. - 6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3983.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1359 (July 2008), amended LR 37:868 (March 2011), LR 39:3063 (November 2013).

#### **§306. Local School Board Authorizing Responsibilities**

A. Local school boards, as the authorizer of type 1 and type 3 charter schools, have the following authorizing responsibilities:

1. except as otherwise provided herein relating to local school systems in academic crisis, as defined in Bulletin 111, §4901, to review and formally act upon each charter proposal submitted in conducting such a review, the local school board shall determine whether each proposed charter complies with the law and rules, whether the proposal is valid, complete, financially well-structured, and educationally sound, whether it provides for a master plan for improving behavior and discipline in accordance with R.S. 17:252, whether it provides a plan for collecting data in accordance with R.S. 17:3911, and whether it offers potential for fulfilling the purposes of the law;

2. - 4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3983.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 37:868 (March 2011), amended LR 39:3063 (November 2013).

### §307. Local School Board Duties

A. Local school boards have the following duties relating to charter schools:

1. to report any charter entered into to; and to report the number of schools chartered, the status of those schools, and any recommendations relating to the charter school program to BESE no later than July 1 of each year;

2. provide each charter school with the criteria and procedures that will be used when considering whether to renew a school's charter;

3. to notify the chartering group in writing of any decisions made relative to the renewal or nonrenewal of a school's charter not later than January 31 of the year in which the charter would expire. A notification that a charter will not be renewed shall include written explanation of the reasons for such non-renewal;

4. to make available to chartering groups any vacant school facilities or any facility slated to be vacant for lease or purchase at up to fair market value. In the case of a type 1B or a type 2 charter school created as a result of a conversion, the facility and all property within the existing school shall also be made available to the chartering group. In return for the use of the facility and its contents, the chartering group shall pay a proportionate share of the local school board's bonded indebtedness to be calculated in the same manner as set for in R.S. 17:1990(C)(2)(a)(i). If such facilities were constructed at no cost to the local school board, then such facilities, including all equipment, books, instructional materials, and furniture within such facilities, shall be provided to the charter school at no cost.

5. - 5.a. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, R.S. 17:3982, and R.S. 17:3983.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1359 (July 2008), amended LR 37:868 (March 2011), LR 38:3117 (December 2012), LR 39:3064 (November 2013).

### Chapter 5. Charter School Application and Approval Process

#### §503. Eligibility to Apply for a Type 2 Charter School

A. To be eligible to submit a type 2 charter school application, a group must:

1. - 4. ...

5. except as provided in Subsection B or C of this Section, has submitted a proposal for a type 1 or type 3 charter school to the local school board in whose jurisdiction the charter school is proposed to be located which:

a. has been denied, as evidenced by a motion or resolution of the local school board; or

b. has conditions that have been placed on it that are unacceptable to the group proposing the charter; or

c. the local school board has made no final decision in accordance with the timelines established by BESE for consideration of type 1 and 3 charter applications by local school boards; and

d. have met the requirement set forth in §507, if proposing to convert from a pre-existing school to a charter school.

B. Applicants applying to operate a charter school which is to be located in a local school system in academic crisis, as defined in Bulletin 111, §4901, are not required to submit a type 1 charter application to such local school system and

may submit a proposal for a type 2 charter school directly to BESE.

C. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3973, R.S. 17:3981, R.S. 17:3982, R.S. 17:3983, and R.S. 17:3991.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1360 (July 2008), amended LR 37:868 (March 2011), LR 38:3117 (December 2012), LR 39:1431 (June 2013), LR 39:3064 (November 2013).

#### §507. Existing Public Schools Converting to Charter Schools

A. - B. ...

C. Approval of the professional faculty and staff requires a favorable vote of the majority of the faculty and staff who are certified by BESE and who were employed at the pre-existing school. The number needed for approval shall be determined by the number of professional faculty and staff assigned to the pre-existing school on October 1 preceding the election.

1. - 4. ...

5. Type 2 conversion votes by professional faculty and staff will follow the process established by the department.

D. Approval by the parents or guardians requires a favorable vote of the majority of the voting parents or guardians of pupils enrolled in the school.

1. - 3. ...

4. Type 2 conversion votes by parents or guardians will follow the process established by the department.

E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3973, and R.S. 17:3983.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1361 (July 2008), amended LR 37:869 (March 2011), LR 39:1431 (June 2013), LR 39:3064 (November 2013).

#### §511. Charter School Application Process

A. - A.5. ...

B. Competitive Process

1. The charter application process shall be a competitive process whereby any entity meeting eligibility requirements may be approved.

2. The charter application shall be in the form of a request for applications.

3. The release of a request for applications must include:

a. public notice;

b. notice to national, regional, and state organizations that support charter schools; and

c. notice to all known interested parties.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, R.S. 17:3981, and R.S. 17:3983.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1361 (July 2008), amended LR 39:1431 (June 2013), LR 39:3064 (November 2013).

#### §517. Consideration of Charter Applications and Awarding of Charters by BESE

A. BESE shall consider each type 2 and type 4 charter school application and vote to approve or deny the application.

B. BESE shall consider each type 5 charter school application that is recommended by the state superintendent of education, based on a recommendation by the Department

of Education, and may vote to approve or deny the recommended application.

C. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3983.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1363 (July 2008), amended LR 37:870 (March 2011), LR 38:750 (March 2012), repromulgated LR 38:1392 (June 2012), amended LR 39:1432 (June 2013), LR 39:3064 (November 2013).

#### **§519. Local School Board Consideration of Charter Application, Awarding of Charters**

A. Local school boards shall carefully review each type 1 and type 3 charter school application they receive and may approve a charter application only after it has made a specific determination that the determine whether each proposed charter complies with the law and rules, whether the proposal is valid, complete, financially well-structured, and educationally sound, whether it provides for a master plan for improving behavior and discipline in accordance with R.S. 17:252, whether it provides a plan for collecting data in accordance with R.S. 17:3911.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) and R.S. 17:3981.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education LR 37:2385 (August 2011), amended LR 39:3065 (November 2013).

#### **Chapter 7. Charter School Performance Contract**

##### **§701. Charter School Contract with BESE**

A. ...

B.1. The charter school contract shall define the performance standards to which the charter school will be held accountable and the general terms and conditions under which the charter school will operate. The charter school contract template shall include, but not be limited to:

- a. provisions regarding the establishment of the charter school;
- b. the operation of the charter school;
- c. charter school financial matters;
- d. charter school personnel;
- e. charter term, renewal and revocation; and
- f. other provisions determined necessary by BESE.

2. The charter school contract shall also include exhibits that provide detailed information about the terms and conditions under which the school will operate.

C. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) and R.S. 17:3981.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1363 (July 2008), amended LR 37:2385 (August 2011), LR 38:751 (March 2012), repromulgated LR 38:1393 (June 2012), amended LR 38:3118 (December 2012), LR 39:3065 (November 2013).

#### **Chapter 11. Ongoing Review of Charter Schools**

##### **§1101. Charter School Evaluation**

A. - C. ...

D. In measuring the organizational and financial performance of schools as part of the charter school performance compact, charter schools will be given one of the following ratings:

1. meets expectations;
2. approaches expectations;
3. fails to meet expectations.

E. - I.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3991.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1363 (July 2008), amended LR 37:871 (March 2011), repromulgated LR 37:1124 (April 2011), amended LR 37:2385 (August 2011), LR 38:751 (March 2012), repromulgated LR 38:1393 (June 2012), amended LR 38:3118 (December 2012), LR 39:1433 (June 2013), LR 39:3065 (November 2013).

#### **Chapter 13. Charter Term**

##### **§1303. Extension Review**

A. ...

B. Each type 2, type 4, and type 5 charter school's extension review shall be used to determine if the school will receive a one-year extension, as follows.

###### 1. Contract Extension

a. Each charter school shall be reviewed based on academic, financial, and legal and contractual performance data collected by the Department of Education. If such performance data reveal that the charter school is achieving the following goals and objectives, the board shall extend the duration of the charter for a maximum initial term of five years.

i. For the December 2013 extension process, a charter school shall have:

- (a). a financial risk assessment that has not been deemed to require "dialogue" as set forth in §1101.E; and
- (b). no violation of legal or contractual standards as defined in §1101.I.3;
- (c). one of the following student performance standards:

(i). school has earned a D letter grade or higher based on performance data from the school's third year of operation based on the letter grade from the 2013 annual SPS or the letter grade from the 2012 transition baseline SPS;

(ii). the assessment index based on performance data from the school's third year of operation from either the 2013 annual SPS or the 2012 transition baseline SPS is the equivalent of a D letter grade or higher; or

(iii). the assessment index based on performance data from the school's third year of operation has increased 15 or more points from the pre-assessment index on the 200 point scale.

2. - 2.a.ii. ...

###### 3. Probationary Extension

a. - a.ii. ...

b. If, upon consideration for initial renewal, a charter school placed on probationary extension has not resolved all of the issues related to its probation status, the state superintendent may recommend that the board deny the charter school's request for renewal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1367 (July 2008), amended LR 37:2387 (August 2011), LR 38:751 (March 2012), repromulgated LR 38:1393 (June 2012), amended LR 38:3118 (December 2012), LR 39:1435 (June 2013), LR 39:3065 (November 2013).

**Chapter 15. Charter Renewal**

**§1503. Charter Renewal Process and Timeline**

A. - B.1.a. ...

2. Consistent with the philosophy of rewarding strong performance and providing incentives for schools to strive for continual improvement, the renewal terms for BESE-authorized charter schools will be linked to each school's letter grade (based on the school's performance on the state assessment in the year prior to the renewal application) in accordance with the table that follows.

a. For the December 2013 renewal process, the 2013 annual SPS letter grade and the following table will be used.

Maximum Charter Renewal Terms	
Letter Grades	Maximum Renewal Term
F	3 years
D	3 Years
C	5 Years
B	10 Years
A	10 years

b. For the December 2014 and future renewal processes, the annual SPS letter grade and the following table will be used.

Maximum Charter Renewal Terms	
Letter Grades	Maximum Renewal Term
F	3 years
D	3 Years
C	6 Years
B	7 Years
A	10 years

3. A charter school in its initial term where fewer than 50 percent of its enrolled grades are testable under state accountability will be eligible for a renewal term of three years.

4. For the December 2013 renewal process, a BESE-authorized charter school receiving a letter grade of F based on the 2013 annual SPS, based on performance on the state's assessment and accountability program based on year four test data (or the year prior to the submission of a renewal application for subsequent renewals) will not be eligible for renewal, unless one of these conditions are met.

a. A charter school that by contract serves a unique student population where an alternate evaluation tool has been established between the charter operator and the board may be renewed for a term not to exceed five years.

b. A charter school in its initial term that has earned a letter grade of F based on the 2013 annual SPS and has earned a letter grade of D or higher based on the 2012 transition baseline SPS may be renewed for a term not to exceed three years.

c. A charter school in its initial term that has a letter grade of F based on the 2013 annual SPS and a letter grade of F based on the 2012 transition baseline SPS may be renewed for a term not to exceed three years if it met its 2012 growth target at the end of year four or if it has a F letter grade based on the 2013 growth SPS.

d. A charter school in its initial term that has a letter grade of F based on either the 2013 annual SPS system or the 2012 transition baseline SPS, but where fewer than 30

percent of its enrolled grades are testable under state accountability, may be renewed for a term not to exceed three years.

e. If, in the superintendent's judgment, the non-renewal of a charter school with a letter grade of F based on either the 2013 annual SPS or 2012 transition baseline SPS in its initial charter term would likely require many students to attend lower performing schools, and the superintendent recommends its renewal, the charter may be renewed for a term not to exceed three years. Prior to recommending such renewal, the superintendent must demonstrate that efforts to find a new, high-quality operator for the school were unsuccessful.

f. The school has made 20 points of assessment index growth from its pre-assessment index on the 200 point scale.

**C. Financial Performance**

1. Each charter operator is required to engage in financial practices, financial reporting, and financial audits to ensure the proper use of public funds and the successful fiscal operation of the charter school. The charter school shall be evaluated using the financial risk assessment and the financial indicators included in the charter school performance compact. For the December 2013 renewal process, only the financial risk assessment will be used to evaluate schools.

2. ...

3. BESE Standards for Financial Performance. BESE may reduce the renewal term by a year for any charter school that has been found to require monitoring or "dialogue" as part of their most recent fiscal risk assessment. No term shall be less than three years.

**D. Organizational Performance**

1. - 2. ...

3. BESE will not renew a charter if it has failed to demonstrate over the term of its contract, the fundamental ability to adhere to the statutory, regulatory, contractual obligations, reporting requirements, and organizational performance standards articulated above and/or in the charter school performance compact.

**E. Initial Renewal for BESE-Authorized Charter Schools**

1. - 2. ...

3. Based on the school's academic, financial, and contractual performance, the state superintendent of education may recommend one of three actions:

- a. renewal for the maximum term identified in the maximum charter renewal terms table;
- b. renewal for a shorter term (based on deficiencies in financial and/or legal/contract performance, although not to be less than three years); or
- c. non-renewal.

**E.4. - F.4. ...**

**G. Automatic Renewal of Charter Schools**

1. ...

2. A charter school that meets the following conditions shall be automatically renewed and shall be exempted from the renewal process requirements listed in Subsection E or F of this Section, as appropriate:

a. For the December 2013 renewal process, the school's 2013 annual SPS letter grade will be used as the school's current school performance Label and the table below will be used for automatic renewals.

Current School Performance Label	Other Requirements (must meet all)	Eligibility
F	Not applicable	Not eligible for automatic renewal
D	<ul style="list-style-type: none"> <li>• 10 points of academic growth in past 2 years</li> <li>• no violations of legal or contractual standards, as defined in §1101.F.3.; and</li> <li>• No issues requiring “Dialogue” in two most recent Financial Risk Assessments</li> </ul>	Will be automatically renewed
C	<ul style="list-style-type: none"> <li>• 5 points of academic growth in past 2 years</li> <li>• no violations of legal or contractual standards, as defined in §1101.F.3.; and</li> <li>• No issues requiring “Dialogue” in two most recent Financial Risk Assessments</li> </ul>	Will be automatically renewed
B or A	<ul style="list-style-type: none"> <li>• Academic improvement over charter term</li> <li>• no violations of legal or contractual standards, as defined in §1101.F.3.; and</li> <li>• No issues requiring “Dialogue” in two most recent Financial Risk Assessments</li> </ul>	Will be automatically renewed

b. For the December 2014 and future renewal processes:

- i. has received a letter grade of A or B;
- ii. has demonstrated growth in student academic achievement as measured by an increasing school performance score over the three preceding school years;
- iii. has received a “meets expectations” designation in its most recent evaluation in organizational performance according to the charter school performance compact; and
- iv. has received a “meets expectations” designation in its most recent evaluation in financial performance according to the charter school performance compact.

3. The automatic renewal term shall be in line with the terms specified in Paragraph B.2 of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3992.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:479 (March 2010), amended LR 37:871 (March 2011), LR 37:2388 (August 2011), LR 38:752 (March 2012), repromulgated LR 38:1394 (June 2012), amended LR 38:3119 (December 2012), LR 39:1436 (June 2013), LR 39:3066 (November 2013).

## Chapter 16. School Closure

### §1601. School Closure Protocol

A. In the event a BESE-authorized charter school closes permanently for any reason, the school shall adhere to the school closure protocol developed by the Department of Education.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) and RS 17:3981.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:3067 (November 2013).

## Chapter 17. Revocation

### §1703. Revocation Proceedings

A. Recommendation to Revoke Charter for BESE-Authorized Charter Schools

1. A recommendation to revoke a charter shall be made to BESE by the state superintendent of education based on information provided by the Department of Education, at least one BESE meeting prior to the BESE meeting at which the recommendation may be considered, except as otherwise provided herein when the health, safety, and welfare of students is at issue.

A.2. - G.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) and R.S. 17:3981.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1368 (July 2008), amended LR 37:872 (March 2011), LR 38:752 (March 2012), repromulgated LR 38:1394 (June 2012), amended LR 39:3067 (November 2013).

## Chapter 19. Amendments to BESE-Authorized Charters

### §1903. Material Amendments for BESE-Authorized Charter Schools

A. A material amendment to a charter is an amendment that makes substantive changes to a charter school's governance, operational, or academic structure. Material amendments include:

1. changes in legal status or management, including the structure of the governing board, a corporate partnership, or assignment of or changes in management organization;
2. changes in grade levels served;
3. changes in student enrollment which result in enrollment in excess of 120 percent of the total number of students set forth in the school's charter, applicable;
  - a. the superintendent of the recovery school district is authorized to amend the charter of any type 5 charter school participating in a unified enrollment system administered by the recovery school district for the purpose of adjusting student enrollment limitations;
4. changes in admission procedures or criteria, if applicable;
5. changes in any option expressed in the charter contract exhibit with respect to collective bargaining; and
6. any changes to the charter contract not specifically identified as non-material amendments.

B. ...

C. The charter operator shall submit a request for a material amendment to its charter in compliance with all timelines and pursuant to all guidance, forms, and/or applications developed and set forth by the Department of Education.

D. - E.3.c. ...

F. When time is of the essence and circumstances require immediate consideration of a material amendment request, a committee composed of the state superintendent, BESE president, and School Innovation and Turnaround Committee shall have interim authority to consider material amendment requests. All approvals or denials of material amendment requests pursuant to this Subsection shall be ratified by BESE at the following BESE meeting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3992.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1369 (July 2008), amended LR 37:873 (March 2011), LR 37:2389 (August 2011), LR 38:752 (March 2012), repromulgated LR 38:1394 (June 2012), amended LR 38:3120 (December 2012), LR 39:3067 (November 2013).

**§1905. Non-Material Amendments for BESE-  
Authorized Charter Schools**

A. A non-material amendment to a charter is an amendment that makes non-substantive changes to a school's charter. Non-material amendments include:

1. changes to the mailing address, telephone, and/or facsimile number of the charter school;
2. changes to the designated contact person for the charter operator or changes to the contact person located at the charter school site; and
3. changes in any option expressed in the charter contract exhibits with respect to Teachers' Retirement System of Louisiana.

B. A non-material amendment will be effective following approval by the board of directors of the charter school.

C. The charter operator shall provide the Department of Education with written notification of a non-material amendment to its charter within five days of board approval in compliance with all requirements set forth by the Department of Education.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3992.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1370 (July 2008), amended LR 37:873 (March 2011), LR 39:3068 (November 2013).

**§1907. Other Charter Amendments for BESE-  
Authorized Charter Schools**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3992.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1370 (July 2008), amended LR 37:873 (March 2011), repealed LR 39:3068 (November 2013).

**Chapter 21. Charter School Governance**

**§2105. Board Member Training for BESE-Authorized  
Charter Schools**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) and R.S. 17:3981.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1371 (July 2008), Amended LR 37:874 (March 2011), repealed LR 39:3068 (November 2013).

**Chapter 25. Charter School Fiscal Responsibilities**

**§2501. Qualified and Competent Business Professional**

A. ...

B. A qualified and competent business professional shall meet one of the qualifications as listed in Bulletin 1929, §1301.

C. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) and R.S. 17:3981.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1372 (July 2008), amended LR 38:3120 (December 2012), LR 39:1437 (June 2013), LR 39:3068 (November 2013).

**Chapter 29. Charter School Staff**

**§2905. Criminal History Review**

A. - A.3. ...

B. No person who has been convicted of or has pled *nolo contendere* to a crime listed in R.S. 15:587.1 shall be hired by a public elementary or secondary school as a teacher, substitute teacher, bus driver, substitute bus driver, janitor, or as any school employee who might reasonably be expected to be placed in a position of supervisory or disciplinary authority over school children unless approved in writing by a district judge of the parish and the parish district attorney.

1. This statement of approval shall be kept on file at all times by the school and shall be produced upon request to any law enforcement officer.

C. ...

D. A charter operator may reemploy a teacher or other school employee who has been convicted of, or pled *nolo contendere* to, a crime listed in R.S. 15:587.1(c), except R.S. 14:74, only upon written approval of the district judge and the district attorney of the parish or upon written documentation from the court in which the conviction occurred stating that the conviction has been reversed, set aside, or vacated.

1. Any such statement of approval of the judge and the district attorney and any such written documentation from the court shall be kept on file at all times by the school and shall be produced upon request to any law enforcement officer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3991.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1375 (July 2008), amended LR 37:875 (March 2011), LR 39:3068 (November 2013).

**§2911. Evaluation and Assessment**

A. Each charter operator shall annually evaluate every teacher and administrator employed at its charter schools using the value-added assessment model and measures of student growth as determined by the State Board of Elementary and Secondary Education pursuant to R.S. 17:3902(B)(5) and comply with all other such requirements specified in R.S. 17: 3997.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3997.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1377 (July 2008), amended LR 39:3068 (November 2013).

**Chapter 31. Notification Requirements for BESE-  
Authorized Charter Schools**

**§3101. Required Notifications**

A. The charter operator shall notify the Department of Education in a timely manner of any conditions that may cause it to vary from the terms of its charter, state law, or BESE policy.

B. The charter operator shall notify the Department of Education of any circumstance requiring the closure of the charter school including, but not limited to:

1. a natural disaster, such as a hurricane, tornado, storm, flood or other weather related event;
2. other extraordinary emergency; or
3. destruction of or damage to the school facility.

C. The charter operator shall notify the Department of Education of the arrest of any members of the charter school's board of directors, employees, contractors,

subcontractors, or any person directly or indirectly employed by the charter operator for a crime listed in R.S. 15:587.1(C) or any crime related to the misappropriation of funds or theft.

D. The charter operator shall notify the Department of Education of a default on any obligation, which shall include debts for which payments are past due by 60 days or more.

E. The charter operator shall notify the Department of Education of any change in its standing with the office of the Louisiana Secretary of State.

F. The charter operator shall notify the Department of Education no later than the end of the calendar month if its enrollment decreases by 10 percent or more compared to the most recent pupil count submitted to the Department of Education and/or BESE.

G. If the charter operator has contracted with a management organization and such contract is terminated or not renewed, it shall provide written notification to the Department of Education within two business days stating the reasons for the termination of the relationship.

H. For a type 5 charter school, the charter operator shall submit a formal plan for the continued operation of the school to the state superintendent of education within 10 days of written notification of the contract's termination. If no plan is received or the plan received is deemed inadequate by the state superintendent of education, the recovery school district shall have interim authority to operate the school until the charter operator resubmits a plan deemed acceptable by the superintendent.

I. Failure of the board to notify the Department of Education about loss of the management organization within two business days may result in BESE rendering the charter operator or a majority of its board members ineligible to operate a charter school for up to five years.

J. The charter operator shall notify the Department of Education should the president of the charter school's governing board change. Such notification shall be made within two business days of the official board action taken on this matter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) and R.S. 17:3981.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1377 (July 2008), amended LR 37:876 (March 2011), LR 39:3068 (November 2013).

Heather Cope  
Executive Director

1311#004

#### **RULE**

#### **Board of Elementary and Secondary Education**

Bulletin 135—Health and Safety  
Diabetes Management and Treatment  
(LAC 28:CLVII.307)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 135—Health and Safety: §307, Diabetes Management and Treatment*. The revision

addresses parental responsibility for a student's diabetes care.

### **Title 28 EDUCATION**

#### **Part CLVII. Bulletin 135—Health and Safety**

#### **Chapter 3. Health**

#### **§307. Diabetes Management and Treatment**

NOTE: This Rule was developed in coordination with the Louisiana State Board of Nursing (LSBN). Any waivers, deletions, additions, amendments, or alterations to this policy shall be approved by both BESE and LSBN.

A. - A.5.a. ...

6. The parent or legal guardian shall be responsible for all care related to the student's diabetes management and treatment plan until all authorized physicians orders, parent authorization, and all medical supplies deemed necessary to care for the student in the school setting have been received by the school nurse.

7. The school nurse shall be responsible for implementing and/or supervising the diabetes management and treatment plan for the student on campus, during school related activities, and during school related transportation of the student for the current year.

B. - I.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:436.3.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education and the Board of Nursing, LR 39:1033 (April 2013), amended LR 39:3069 (November 2013).

Heather Cope  
Executive Director

1311#005

#### **RULE**

#### **Board of Elementary and Secondary Education**

Bulletin 741—Louisiana Handbook for  
School Administrators (LAC 28:CXV.1301)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 741—Louisiana Handbook for School Administrators: §1301, Disciplinary Regulations*. The revision allows more local flexibility in determining suspensions.

### **Title 28 EDUCATION**

#### **Part CXV. Bulletin 741—Louisiana Handbook for School Administrators**

#### **Chapter 13. Discipline**

#### **§1301. Disciplinary Regulations**

A. - F. ...

G. Students who are removed from the classroom for disruptive, dangerous, or unruly behavior or who are suspended for 10 days or less shall be assigned school work missed and shall receive either full or partial credit for such work if it is completed satisfactorily and timely as determined by the principal or designee, upon the recommendation of the student's teacher. A student who is suspended for more than 10 days or is expelled and receives educational services in an alternative school site, shall be

assigned school work by a certified teacher and shall receive credit for school work if it is completed satisfactorily and timely as determined by the teacher. Such work shall be aligned with the curriculum used at the school from which the student was suspended or expelled.

H. - K.4.f. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:223-224, R.S. 17:416, and R.S. 17:416.13.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1282 (June 2005), amended LR 36:1225 (June 2010), LR 37:1132, 1133 (April 2011), LR 39:476 (March 2013), LR 39:3069 (November 2013).

Heather Cope  
Executive Director

1311#006

## RULE

### Board of Elementary and Secondary Education

Bulletin 741 (Nonpublic)—Louisiana Handbook for Nonpublic School Administrators—Programs of Study (LAC 28:LXXIX.107)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 741 (Nonpublic)—Louisiana Handbook for Nonpublic School Administrators—Programs of Study*: §107, School Approval. The revision adds two classifications of approved nonpublic schools.

#### Title 28 EDUCATION

#### Part LXXIX. Bulletin 741 (Nonpublic)—Louisiana Handbook for Nonpublic School Administrators—Programs of Study

#### Chapter 1. Operation and Administration §107. School Approval

A. - D. ...

E. Classification Categories. Schools shall be classified according to the following categories:

1. approved (A)—school meets all standards specified in standards for approval of nonpublic schools. There shall be two types of approved schools:

- a. accredited approved school—school is:
  - i. currently accredited by the Southern Association of Colleges and Schools (SACS); or
  - ii. currently accredited by a member the National Association of Independent Schools (NAIS); and
  - iii. the school meets all other criteria established by this bulletin for Board of Elementary and Secondary Education (BESE) approval;
  - iv. the LDE may also accept accreditation from other school accreditation agencies, but may require the submission of additional information from the school so as to ensure consistent quality;

b. non-accredited approved school—school is not currently accredited by SACS or a member of NAIS, but has met all criteria established by this bulletin for approval;

c. Louisiana Montessori accredited approved school—school meets the Louisiana Montessori Association’s accreditation requirements and all other approval criteria established by this bulletin for Board of Elementary and Secondary Education (BESE) approval;

d. Louisiana Montessori provisionally accredited approved school—school is working toward meeting the Louisiana Montessori Association’s accreditation requirements and has met all other approval criteria established by this bulletin for Board of Elementary and Secondary Education (BESE) approval;

2. registered—school is not accredited by SACS or NAIS and has not met the criteria established by the department for approval, or does not wish to seek state approval.

F. - J. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), and (15), R.S. 17:7(6), R.S. 17:10, R.S. 17:22(6), R.S. 17:391.1-391.10, and R.S. 44:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2342 (November 2003), amended LR 31:3073 (December 2005), LR 36:2847 (December 2010), LR 37:2145 (July 2011), LR 39:3070 (November 2013).

Heather Cope  
Executive Director

1311#007

## RULE

### Office of the Governor Motor Vehicle Commission

Automotive Industry  
(LAC 46:V.101, 1307, 1309, 1707, and 1901)

In accordance with the provisions of the Administrative Procedures Act, R.S. 49:950 et seq., and in accordance with *Revised Statutes* title 32, Chapter 6, notice is hereby given that the Office of the Governor, Louisiana Motor Vehicle Commission has amended and adopted rules to further implement the provisions of R.S. 32:1252(l) which amends the definition of an all-terrain vehicle and codifies the agency’s policy of requiring a manufacturer’s certificate of origin in the licensing process. In §1307, the following language is deleted: “with a maximum of six vehicles per licensee, per display.” This deletion makes clear the authority of the executive director to approve off-site displays and is consistent with similar provisions in the Rule. The requirements for a manufacturer’s motor vehicle display are set forth in §1309. This Rule makes no change but codifies the agency’s policy in effect for many years. The same is true of §1707 with regard to recreational product static off-site displays. The licensing requirements set forth in §1901 codify the agency’s requirement that a manufacturer’s certificate of origin accompany a license application and makes clear the requirements for the certificate.

**Title 46**  
**PROFESSIONAL AND OCCUPATIONAL**  
**STANDARDS**

**Part V. Automotive Industry**

**Subpart 1. Motor Vehicle Commission**

**Chapter 1. General Requirements**

**§101. Definitions**

**[Formerly §707]**

A. ...

\* \* \*

*Manufacture's Certificate of Origin (MCO)*, a *Manufacture's Statement of Origin (MSO)* or a *Certificate of Origin*—a transitional ownership document issued by a manufacturer to a specific vehicle, or if a multi-stage vehicle, to a specific component of the vehicle and includes a *manufacturer's statement of origin (MSO)*, a *certificate of origin* or similar term. An *MCO* is used to convey ownership from the manufacturer to a franchised dealer or distributor and from the franchised dealer or distributor to a purchaser.

\* \* \*

*VIN*—a series of Arabic numbers and Roman letters that are assigned to a vehicle for identification.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253(E) and R.S. 49:953(C).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 34:75 (January 2008), amended LR 36:1545 (July 2010), LR 39:3071 (November 2013).

**Chapter 13. New Motor Vehicle Auto Shows: Offsite Displays**

**§1307. Static Offsite Displays**

A. - C. ...

D. The number of vehicles at any offsite display will be left to the discretion of the executive director.

E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253(E) and R.S. 49:953(C).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 37:2996 (October 2011), repromulgated LR 37:3261 (November 2011), amended LR 39:3071 (November 2013).

**§1309. Manufacturer's Motor Vehicle Display**

A. A manufacturer's motor vehicle display is a vehicle display arranged by a licensed manufacturer, distributor or wholesaler to demonstrate its motor vehicles to the general public. A licensee's request to display motor vehicles must be received by the commission 30 days prior to the commencement of the display.

B. Each manufacturer's motor vehicle display will be limited to 10 days.

C. The number of motor vehicles at any manufacturer's motor vehicle display will be left to the discretion of the executive director.

D. The manufacturer vehicle display may be manned by product specialists, but no licensed motor vehicle dealer personnel will be allowed on the display site.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253(E) and R.S. 49:953(C).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Motor Vehicle Commission, LR 39:3071 (November 2013).

**Chapter 17. Recreational Product Static Offsite Displays; Offsite Expositions**

**§1707. Recreational Products Manufacturer's Display**

A. A recreational products manufacturer's display is a product display arranged by a licensed manufacturer, distributor or wholesaler to demonstrate its recreational products to the general public. A licensee's request to display recreational products must be received by the commission 30 days prior to the commencement of the display.

B. Each manufacturer's recreational products display will be limited to 10 days.

C. The number of recreational products at any manufacturer's display will be left to the discretion of the executive director.

D. The manufacturer's recreational products display may be manned by product specialists, but no licensed recreational products dealer personnel will be allowed to participate or work on the display site.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253(E) and R.S. 49:953(C).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Motor Vehicle Commission, LR 39:3071 (November 2013).

**Chapter 19. Manufacturer, Distributor or Wholesaler License Application; Submission of MSO/MCO; Information Included**

**§1901. Manufacturer, Distributor or Wholesaler License Application; License Application**

A. An application for a license as a vehicle manufacturer, distributor or wholesaler required by R.S. 32:1254 must be accompanied by a manufacturer's statement/certificate of origin (MSO/MCO).

B. The MSO/MCO may be prepared at a factory, assembly plant, or business authorized by the manufacturer. Although variations exist, and MSO/MCO normally is 7"x11" in size, on paper stock 60 pound offset or equivalent durability, and printed with security features that include:

1. sensitize security paper without added optical brighteners that will not fluoresce ultraviolet light;

2. engraved border and prismatic-rainbow printing with copy void pantograph (the word "void" appears when the document is copied); and

3. two complex colors (colors developed by using a mixture of two or more primary colors and black) and two security threads, with or without watermark, and/or intaglio print, with or without latent image, and/or security laminate.

C. The MSO/MCO must contain at least the following information:

1. first conveyance of the vehicle after its manufacture;

2. the model year;

3. make;

4. model, body style;

5. vehicle identification number or serial number if all terrain (ATV) or off-road (ORV) vehicle;

6. an indication that the vehicle was not manufactured for road use, if applicable;

7. shipping weight or curb weight; and

8. the manufacturer's name and address.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253(E) and R.S. 49:953(C).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Motor Vehicle Commission, LR 39:3071 (November 2013).

Lessie A. House  
Executive Director

1311#036

## RULE

### Office of the Governor Real Estate Appraisers Board

Real Estate—Appraisal Management Companies  
(LAC 46:LXVII.30302, 30401, 30501, 30900, and 31101)

Under the authority of the Louisiana Real Estate Appraisers Law, R.S. 37:3397 et seq., and in accordance with the provisions of the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., the Louisiana Real Estate Appraisers Board has amended Chapters 303, 305 and 309, and promulgated Chapters 304 and 311. The purpose of the action is to: (1) establish compliance procedures whereby appraisal management company licensees can meet the amended licensing requirements enacted in Act 429 of the 2012 Regular Session consistent with the requirements of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act; (2) establish grievance or complaint procedures; and (3) further clarify investigative procedures.

#### Title 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part LXVII. Real Estate

#### Subpart 3. Appraisal Management Companies

#### Chapter 303. Forms and Applications

#### §30302. Surety Bond Required; Amount and Conditions; Filing

A. Applicants for licensing as an appraisal management company shall submit proof of a surety bond in the amount of \$20,000 with a surety company qualified to conduct business in Louisiana.

B. Bonds shall be in favor of the state of Louisiana and conditioned for the benefit of a claimant against the licensee for a violation of the Appraisal Management Company Licensing and Regulation Act and/or the rules and regulations of the board.

C. Bonds shall remain effective and in force throughout the license period of the appraisal management company.

D. Proof of surety bond renewal shall be provided to the board in conjunction with the annual renewal of the appraisal management company license.

E. Failure to maintain a surety bond shall be cause for revocation or suspension of a license.

F. A licensee who elects to submit a cash deposit or security in lieu of a surety bond, as provided in R.S. 37:3515.3(D)(5), shall restore the cash deposit or security annually upon license renewal, if a claim has reduced the deposit amount or security below \$20,000.

G. The board may file suit on behalf of a party having a claim against a licensee or a party having a claim may file suit directly against the surety bond. Suits shall be filed within one year after the claim arises.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3415.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Appraisers Board, LR 39:3072 (November 2013).

### Chapter 304. Competency

#### §30401. Appraiser License Verification

A. Prior to making an assignment to a real estate fee appraiser, licensees shall have a system in place to verify that the appraiser holds a license in good standing in this state pursuant to the Louisiana Real Estate Appraisers Law, R.S. 37:3391 et seq. Licensees may rely on the National Registry of the Appraisal Subcommittee for purposes of appraiser license verification. Before or at the time of making an assignment to a real estate fee appraiser, licensees shall obtain a written certification from the appraiser that he or she:

1. is competent in the property type of the assignment;
2. is competent in the geographical area of the assignment;
3. has access to appropriate data sources for the assignment;
4. will immediately notify the licensee in writing if the appraiser later determines that he or she is not qualified to complete the assignment; and
5. is aware that misrepresentation of competency may be subject to the mandatory reporting requirement in the most current version of the Uniform Standards of Professional Appraisal Practice (USPAP).

B. Subsequent to a completed appraisal being submitted to the assigning licensee, any request for additional information that may impact or alter the opinion of value stated therein shall be made by the certified appraiser completing the appraisal review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3415.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Appraisers Board, LR 39:3072 (November 2013).

### Chapter 305. Responsibilities and Duties

#### §30501. Record Keeping

A. - A.4. ...

B. In addition to the records that shall be maintained in Subsection A of this Section, licensees shall maintain a complete list of all real estate fee appraisers approved by the licensee to receive appraisal assignments. The list shall include, but is not limited to, the following information on each fee appraiser:

1. name, license status, and qualifications;
2. errors and omission insurance status, including the carrier, the policy number, the dollar limits of the coverage and the dates covered in the policy, if such insurance is required by the licensee;
3. experience and professional record;
4. the areas in which each fee appraiser considers him/herself geographically competent broken down by parish and/or zip code;
5. the type of property for each appraisal performed;
6. the scope of work for each appraisal performed;
7. the turn time in which the appraisal services are required to be performed;
8. fee appraiser work quality;

9. the number and type of assignments completed per year; and

10. the fee or remuneration or monetary compensation for each report or assignment.

C. All records shall be kept properly indexed and readily available to the board for review upon request. Duly authorized representatives of the board shall be authorized to inspect such records at the offices of licensees between the hours of 9 a.m. and 4 p.m., Saturdays, Sundays, and legal holidays excluded, upon 10 calendar days written notice to the licensee, and to subpoena any of the said records.

D. All records specified in this Chapter shall be retained for a period of five years; however, records that are used in a judicial proceeding, in which the appraiser provided testimony related to the appraisal assignment, shall be retained for at least two years after disposition, whichever period expires last.

E. At any time that a document or information on file with the board becomes inaccurate or incomplete, the appraisal management company shall notify the board in writing within 10 business days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3415.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Appraisers Board, LR 37:2407 (August 2011), amended LR 39:3072 (November 2013).

### **Chapter 309. Investigations; Disciplinary Authority; Enforcement and Hearing**

#### **§30900. Investigations**

A. The board may, upon its own motion, and shall, upon the verified complaint in writing of any person, investigate the actions of a licensee or certificate holder, or any person who assumes to act as such. Written complaints shall bear the signature of the complainant or that of his legal representative before any action will be taken thereon by the board.

B. The executive director of the board may issue written authorization to investigate apparent violations of the Louisiana Appraisal Management Company Licensing and Regulation Act and/or the rules and regulations of the board.

C. Investigations shall be conducted by the staff of the Louisiana Real Estate Appraisers Board and/or the Louisiana Real Estate Commission.

D. If, during the course of an investigation, information is established indicating that violations of the Louisiana Appraisal Management Company Licensing and Regulation Act and/or the rules and regulations of the board have been committed by any licensee other than the licensee against whom the original complaint was made, the additional licensee may be added as a respondent to the investigation in the absence of any written complaint alleging such violations.

E. The board may file suit in the Nineteenth Judicial District Court in the parish of East Baton Rouge to enforce a subpoena against any person that does not comply with a subpoena issued by the board.

F. Full or partial compliance audits may be authorized by the executive director, or by affirmative vote of the board, to determine compliance with all provisions of applicable law and rules. A maximum of 10 percent of all registered licensees may be subject to audit in any calendar year. Licensees selected for audit shall be given 10 days written notice prior to commencement of the audit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3415.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Appraisers Board, LR 39:3073 (November 2013).

### **Chapter 311. Compensation of Fee Appraisers**

#### **§31101. General Provisions; Customary and Reasonable Fees; Presumptions Of Compliance**

A. Licensees shall compensate fee appraisers at a rate that is customary and reasonable for appraisal services performed in the market area of the property being appraised and as prescribed by R.S. 37:3415.15(A). For the purposes of this Chapter, market area shall be identified by zip code, parish, or metropolitan area.

1. Evidence for such fees may be established by objective third-party information such as government agency fee schedules, academic studies, and independent private sector surveys. Fee studies shall exclude assignments ordered by appraisal management companies.

2. The board, at its discretion, may establish a customary and reasonable rate of compensation schedule for use by any licensees electing to do so.

3. Licensees electing to compensate fee appraisers on any basis other than an established fee schedule as described in Paragraphs 1 or 2 above shall, at a minimum, review the factors listed in §31101.B.1-6 on each assignment made, and make appropriate adjustments to recent rates paid in the relevant geographic market necessary to ensure that the amount of compensation is reasonable.

B. A licensee shall maintain written documentation that describes or substantiates all methods, factors, variations, and differences used to determine the customary and reasonable fee for appraisal services conducted in the geographic market of the appraisal assignment. This documentation shall include, at a minimum, the following elements:

1. the type of property for each appraisal performed;
2. the scope of work for each appraisal performed;
3. the time in which the appraisal services are required to be performed;
4. fee appraiser qualifications;
5. fee appraiser experience and professional record; and
6. fee appraiser work quality.

C. Licensees shall maintain records of all methods, factors, variations, and differences used to determine the customary and reasonable rate of compensation paid for each appraisal assignment in the geographic market of the property being appraised, in accordance with Section §30501.C.

D. Except in the case of breach of contract or substandard performance of real estate appraisal activity, an appraisal management company shall make payment to an independent contractor appraiser for the completion of an appraisal or appraisal review assignment:

1. within 30 days after the appraiser provides the completed appraisal report to the appraisal management company; or
2. in accordance with another payment schedule agreed to in writing by the appraiser and the appraisal management company.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3415.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Appraisers Board, LR 39:3073 (November 2013).

Bruce Unangst  
Executive Director

1311#029

## RULE

### Office of the Governor Real Estate Commission

#### Buyer Broker Compensation; Written Disclosure and Acknowledgment (LAC 46:LXVII.3503)

Under the authority of the Louisiana Real Estate License Law, R.S. 37:1430 et seq., and in accordance with the provisions of the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Louisiana Real Estate Commission has amended LAC 46:LXVII, Real Estate, Chapter 35, to require certain disclosures and acknowledgements in written offers regarding buyer broker compensation.

### Title 46 PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part LXVII. Real Estate Subpart 1. Real Estate

#### Chapter 35. Disclosure by Licensee

#### §3503. Buyer Broker Compensation; Written Disclosure and Acknowledgment

A. Buyer broker compensation shall not be included as part of closing costs paid by the seller, unless such compensation is disclosed in a written offer and accepted by the seller, which specifically states the amount of compensation being paid to the licensee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Commission, LR 39:3074 (November 2013).

Bruce Unangst  
Executive Director

1311#030

## RULE

### Department of Health and Hospitals Board of Pharmacy

#### Penal Pharmacy Permit (LAC 46:LIII.1801, 1807, and 2303)

Editor's Note: A hearing was not held pursuant to R.S. 49:968(H)(2) to incorporate the changes in this Rule.

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and the Pharmacy Practice Act (R.S. 37:1161 et seq.), the Louisiana Board of Pharmacy amends three Sections of its rules, to clarify the necessity of a penal pharmacy permit only for those pharmacies serving offenders in the custody of the state department of corrections.

### Title 46 PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part LIII. Pharmacists

#### Chapter 18. Penal Pharmacy

#### §1801. Penal Pharmacy Permit

A. A penal pharmacy permit shall be required to operate a pharmacy located within a penal institution owned and/or operated by the Louisiana Department of Public Safety and Corrections, or its successor, (hereinafter, "the department"), to provide medications and pharmacy care for offenders residing in that institution or another penal institution owned and operated by the department. The pharmacy in the penal institution may also provide medications and pharmacy care to offenders assigned to that institution and residing at home or another housing location.

B. In the event a pharmacy located within the state but outside a penal institution intends to provide medications and pharmacy care on a contractual basis to offenders residing in, or assigned to, a penal institution owned and/or operated by the department that pharmacy shall first obtain a penal pharmacy permit.

C. In the event a nonresident pharmacy intends to provide medications and pharmacy care on a contractual basis to offenders residing in, or assigned to, a penal institution owned and/or operated by the department, or to any offender in the custody of the department shall first obtain a nonresident penal pharmacy permit, and further, shall comply with these rules with the exception of acquiring a separate penal pharmacy permit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1226.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 38:1236 (May 2012), amended LR 39:3074 (November 2013).

#### §1807. Prescription Department Requirements

A. The prescription department of a penal pharmacy shall comply with the minimum specifications identified in §1103, Prescription Department Requirements, of the board's rules, and further, the specifications provided for the penal pharmacy permit may not be held or used by any other pharmacy permit.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1226.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 38:1237 (May 2012), amended LR 39:3074 (November 2013).

#### Chapter 23. Out-of-State Pharmacy

#### §2303. Out-of-State Pharmacy Requirements

A. - C. ...

D. Every nonresident pharmacy doing business in Louisiana by dispensing and delivering prescription drugs and devices to offenders in the custody of the Louisiana Department of Public Safety and Corrections shall apply for and maintain a nonresident penal pharmacy permit, and further, shall comply with the provisions of Chapter 18 of the board's rules, with the single exception of the necessity for acquiring a separate penal pharmacy permit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 18:1380 (December 1992), effective January 1, 1993, LR 29:2100 (October 2003), effective January 1, 2004, LR 39:3074 (November 2013).

Malcolm J Broussard  
Executive Director

1311#016

## RULE

### Department of Health and Hospitals Board of Pharmacy

#### Preferential Licensing for Military Personnel (LAC 46:LIII.506 and 904)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and the Pharmacy Practice Act (R.S. 37:1161 et seq.), and pursuant to the provisions of Act 276 of the 2012 Legislature, the Louisiana Board of Pharmacy has adopted new Sections to two of its Chapters of rules: §506 in Chapter 5, Pharmacists and §904 in Chapter 9, Pharmacy Technicians, to establish preferential licensing procedures for certain military personnel.

#### Title 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part LIII. Pharmacists

#### Chapter 5. Pharmacists

#### Subchapter A. Licensure Procedures

#### §506. Preferential Licensing Procedures for Military-Trained Applicants and Their Spouses

A. Preferential licensing procedures are available for certain persons. Eligibility for such procedures are available to the following.

1. A military-trained applicant is a person who:
  - a. has completed a military program of training, been awarded a military occupational specialty, and performed in that specialty at a level that is substantially equivalent to or exceeds the requirements for pharmacist licensure in this state;
  - b. has engaged in the active practice of pharmacy; and
  - c. has not been disciplined in any jurisdiction for an act that would have constituted grounds for refusal, suspension, or revocation of a license to practice pharmacy in this state at the time the act was committed.
2. A military spouse is a person who:
  - a. can demonstrate marriage to a person in active duty military service or with commitment to reserve duty, as evidenced by legible copies of marriage license and military orders;
  - b. holds a current and unrestricted license to practice pharmacy in another jurisdiction within the United States or any of its territories that has not been disciplined by the agency issuing that license; and
  - c. can demonstrate competency to practice pharmacy through various methods determined by the board, e.g., evidence of continuing education activity, letters of competency from previous practice manager, remediation examination, or personal interview.

B. Upon receipt of an application for pharmacist licensure by a military-trained applicant or military spouse, the board office shall mark the application for priority processing and preserve that status until the license is issued, or in the alternative, the board gives notice of its intent to deny the application and refuse to issue the license.

C. In the event the military-trained applicant or military spouse intends to practice pharmacy before the issuance of the license, the board may issue a special work permit to that person.

1. The special work permit shall expire 120 days after the date of issue, and the permit shall not be renewable.

2. The special work permit shall identify the military-trained applicant or military spouse, and further, shall indicate the authority for that person to practice pharmacy within the state of Louisiana as well as the dates of issue and expiration of the credential.

3. No military-trained applicant or military spouse may practice pharmacy prior to the receipt of a special work permit or pharmacist license, or with an expired special work permit or pharmacist license.

4. The special work permit shall not be eligible for reciprocity to any other jurisdiction.

D. The provisions of this Section shall not apply to a military-trained applicant who has received, or is in the process of receiving, a dishonorable discharge from the military. Further, the provisions of this Section shall not apply to a military spouse whose spouse has received, or in the process of receiving, a dishonorable discharge from the military.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3650.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 39:3075 (November 2013).

#### Chapter 9. Pharmacy Technicians

#### §904. Preferential Licensing Procedures for Military-Trained Applicants and Their Spouses

A. Preferential licensing procedures are available for certain persons. Eligibility for such procedures are available to the following.

1. A military-trained applicant is a person who:
  - a. has completed a military program of training, been awarded a military occupational specialty, and performed in that specialty at a level that is substantially equivalent to or exceeds the requirements for technician certification in this state;
  - b. has engaged in the active practice of pharmacy; and
  - c. has not been disciplined in any jurisdiction for an act that would have constituted grounds for refusal, suspension, or revocation of a technician certificate to practice pharmacy in this state at the time the act was committed.
2. A military spouse is a person who:
  - a. can demonstrate marriage to a person in active duty military service or with commitment to reserve duty, as evidenced by legible copies of marriage license and military orders;
  - b. holds a current and unrestricted technician certificate to practice pharmacy in another jurisdiction within the United States or any of its territories that has not been disciplined by the agency issuing that certificate; and

c. can demonstrate competency to practice pharmacy through various methods determined by the board, e.g., evidence of continuing education activity, letters of competency from previous practice manager, remediation examination, or personal interview.

B. Upon receipt of an application for pharmacy technician candidate registration by a military-trained applicant or military spouse, the board office shall mark the application for priority processing and preserve that status until the registration is issued, or in the alternative, the board gives notice of its intent to deny the application and refuse to issue the registration.

C. In the event the military-trained applicant or military spouse intends to practice pharmacy before the issuance of the registration, the board may issue a special work permit to that person.

1. The special work permit shall expire 120 days after the date of issue, and the permit shall not be renewable.

2. The special work permit shall identify the military-trained applicant or military spouse, and further, shall indicate the authority for that person to practice pharmacy within the state of Louisiana as well as the dates of issue and expiration of the credential.

3. No military-trained applicant or military spouse may practice pharmacy prior to the receipt of a special work permit or pharmacy technician candidate registration, or with an expired special work permit or pharmacy technician candidate registration.

4. The special work permit shall not be eligible for reciprocity to any other jurisdiction.

D. The provisions of this Section shall not apply to a military-trained applicant who has received, or is in the process of receiving, a dishonorable discharge from the military. Further, the provisions of this Section shall not apply to a military spouse whose spouse has received, or in the process of receiving, a dishonorable discharge from the military.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3650.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 39:3075 (November 2013).

Malcolm J. Broussard  
Executive Director

1311#015

## RULE

### Department of Health and Hospitals Bureau of Health Services Financing

Federally Qualified Health Centers  
Fluoride Varnish Applications  
(LAC 50:XI.10301 and 10701)

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 50:XI.10301 and §10701 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

## Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part XI. Clinic Services

#### Subpart 13. Federally-Qualified Health Centers

#### Chapter 103. Services

#### §10301. Scope of Services

[Formerly §10501]

A. - B.1. ...

C. Effective December 1, 2011, the department shall provide coverage for fluoride varnish applications performed in the FQHC. This service shall be limited to recipients from six months through five years of age. Fluoride varnish applications may be covered once every six months per Medicaid recipient.

1. Fluoride varnish applications shall be reimbursed when performed in the FQHC by:

- a. the appropriate dental providers;
- b. physicians;
- c. physician assistants;
- d. nurse practitioners;
- e. registered nurses; or
- f. licensed practical nurses.

2. All participating staff shall review the Smiles for Life training module for fluoride varnish and successfully pass the post assessment. All staff involved in the varnish application must be deemed as competent to perform the service by the FQHC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2328 (October 2004), repromulgated LR 30:2487 (November 2004), amended LR 32:1901 (October 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:2927 (September 2011), LR 39:3076 (November 2013).

#### Chapter 107. Reimbursement Methodology

#### §10701. Prospective Payment System

A. - B.3.a. ...

4. Effective for dates of service on or after December 1, 2011, the Medicaid Program shall include coverage for fluoride varnish applications in the FQHC encounter rate.

a. Fluoride varnish applications shall only be reimbursed to the FQHC when performed on the same date of service as an office visit or preventative screening. Separate encounters for fluoride varnish services are not permitted and the application of fluoride varnish does not constitute an encounter visit.

C. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1902 (October 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:2630 (September 2011), LR 39:3076 (November 2013).

Kathy H. Kliebert  
Secretary

1311#085

## RULE

### Department of Health and Hospitals Bureau of Health Services Financing

Health Care Facility Sanctions  
(LAC 48:I.Chapter 46 and LAC 50:I.Chapter 55)

The Department of Health and Hospitals, Bureau of Health Services Financing has repealed LAC 50:I.Chapter 55 governing health care facility sanctions in its entirety and has adopted LAC 48:I.Chapter 46 as authorized by R.S. 36:254, 40:2009.11, 40:2009.23, 40:2199 and 40:2199.1. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

#### Title 48

#### PUBLIC HEALTH—GENERAL

#### Part I. General Administration

#### Subpart 3. Licensing and Certification

#### Chapter 46 Health Care Facility Sanctions

#### Subchapter A. General Provisions

#### §4601. Introduction

A. The purpose of this Chapter is to:

1. provide for the development, establishment and enforcement of statewide standards for the imposition of sanctions pursuant to state statutes against health care facilities in the state of Louisiana which have violations of federal or state law or statutes, licensure standards and requirements, certification requirements, or Medicaid requirements;

2. specify criteria as to when and how each sanction is to be applied;

3. specify the severity of the sanctions to be used in the imposition of such sanctions;

4. develop the procedure and requirements for applying each sanction;

5. provide for an administrative reconsideration process as well as an appeal procedure, including judicial review; and

6. provide for the administration of the Nursing Home Residents' Trust Fund and the Health Care Facility Fund.

B. This Chapter shall not apply to any individual health care provider who is licensed or certified by one of the boards under the Department of Health and Hospitals. These boards include, but are not limited to:

1. Board of Pharmacy;
2. Board of Physical Therapy;
3. Board of Licensed Medical Examiners;
4. Board of Dentistry;
5. Board of Podiatry; and
6. Board of Optometrists.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.11, 40:2009.23, 40:2199 and 40:2199.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3077 (November 2013).

#### §4603. Definitions

*Administrative Reconsideration*—for purposes of this Chapter, also known as informal reconsiderations.

*Class A Violation*—a violation of a rule or regulation that creates a condition or occurrence relating to the maintenance and/or operation of a facility which results in death or

serious harm to a client. Examples of *class A violations* include, but are not limited to:

1. acts or omissions by an employee or employees of a facility that either knowingly or negligently resulted in the death of a client; or

2. acts or omissions by an employee or employees of a facility that either knowingly or negligently resulted in serious harm to a client.

*Class B Violation*—a violation of a rule or regulation in which a condition or occurrence relating to the maintenance and/or operation of a facility is created which results in the substantial probability of death or serious physical or mental harm to a client. Examples of *class B violations* include, but are not limited to:

1. medications or treatments improperly administered or withheld;

2. lack of functioning equipment necessary to care for a patient or client;

3. failure to maintain emergency equipment in working order;

4. failure to employ a sufficient number of adequately trained staff to care for clients; or

5. failure to implement adequate infection control measures.

*Class C Violation*—a violation of a rule or regulation in which a condition or occurrence relating to the maintenance and/or operation of a facility creates a potential for harm by directly threatening the health, safety, rights, or welfare of a client. Examples of *class C violations* include, but are not limited to:

1. failure to perform treatments as ordered by the physician, including the administration of medications;

2. improper storage of poisonous substances;

3. failure to notify the physician and family of changes in the condition of a patient or client;

4. failure to maintain equipment in working order;

5. inadequate supply of needed equipment;

6. lack of adequately trained staff necessary to meet a patient's or client's needs; or

7. failure to protect patients or clients from personal exploitation including, but not limited to, sexual conduct involving facility staff and a patient or client.

*Class D Violation*—a violation of a rule or regulation related to administrative and reporting requirements that do not directly threaten the health, safety, rights, or welfare of a client. Examples of *class D violations* include, but are not limited to:

1. failure to submit written reports of accidents;

2. failure to timely submit a plan of correction;

3. falsification of a record; or

4. failure to maintain a patient's or client's financial records as required by rules and regulations.

*Class E Violation*—a violation that occurs when a facility fails to submit a statistical or financial report in a timely manner as required by rule or regulation.

*Client*—an individual receiving services from a health care facility.

*CMS*—the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

*Department* or *DHH*—the Louisiana Department of Health and Hospitals.

*Desk Review*—Health Standards Section’s (HSS) procedure for conducting administrative reconsiderations of sanctions in which a panel of HSS employees, who were not involved in the decisions to cite the deficiencies that were the basis of the sanction or impose the sanction, reviews the documentation submitted by the facility and the information on which the sanction was based and determines whether the sanction was appropriate. Oral presentations are not scheduled unless requested.

*Devolutive Appeal*—an appeal that does not suspend the execution of the administrative sanction pending the outcome of the appeal.

*Division of Administrative Law (DAL)*—the Louisiana Department of State Civil Service, *Division of Administrative Law*, or its successor.

*Health Care Facility or Facility*—any health care provider or entity licensed or certified by DHH. In other laws, statutes and regulations, this entity may be referred to as a provider, agency, clinic, residential unit, or home. A *health care facility* shall include, but not be limited to a/an:

1. abortion clinic;
2. adult brain injury facility;
3. adult day health care agency;
4. adult residential care provider (ARCP);
5. ambulatory surgical center;
6. case management agency;
7. behavioral health service provider;
8. crisis receiving center;
9. emergency medical services provider;
10. end stage renal disease (ESRD) treatment facility;
11. forensic supervised transitional residential and aftercare facility;
12. supplier of portable x-ray services;
13. home and community-based services (HCBS) provider;
14. home health agency;
15. hospice agency;
16. hospital;
17. intermediate care facility for persons with developmental disabilities (ICF-DD);
18. mental health clinic;
19. mental health center;
20. mental health rehabilitation agency;
21. non-emergency medical transportation agency;
22. nursing facility;
23. rural health clinic;
24. pain management clinic;
25. pediatric day health care (PDHC) facility;
26. psychiatric rehabilitation treatment facility (PRTF);
27. substance abuse/addiction treatment facility; and
28. therapeutic group home (TGH).

*HSS*—the Department of Health and Hospitals, Office of Management and Finance, Health Standards Section.

*Licensee*—the person, partnership, company, corporation, association, organization, professional entity, or other entity to whom a license is granted by the licensing agency, and upon whom rests the ultimate responsibility and authority for the conduct of, and services provided by the facility.

*Louisiana Administrative Procedure Act (APA)*—R.S. 49:950 et seq.

*New Admission*—any individual admitted to a facility or a new client receiving services from the facility after the

facility receives notice of the sanction and on or after the effective date of the sanction as listed in the sanction notice. A client who was admitted prior to the effective date of the sanction and taking temporary leave before, on or after the effective date of the sanction is not considered a new admission upon return to the facility.

*Repeat Violation*—either of the following:

1. the existence of the violation is established as of a particular date and it is one that may be reasonably expected to continue until corrective action is taken. The department may elect to treat the cited continuing violation as a repeat violation subject to appropriate sanction for each day following the date on which the initial violation is established until such time as there is evidence that the violation has been corrected; or

2. the existence of a violation is established and another violation that is the same or substantially similar to the cited violation occurs within 18 months. The second and all similar violations occurring within an 18-month time period will be considered as repeat violations and sanctioned accordingly.

*Sanction*—any adverse action imposed on a facility by the department pursuant to its statutory or regulatory authority for a violation of a statute, law, rule or regulation. For purposes of this Rule, sanction does not include the following:

1. any adverse action that may be applied to a facility by the statewide management organization of the Louisiana Behavioral Health Partnership or its successor, or by a contracted coordinated care network with the Bayou Health program or its successor;

2. any adverse action that may be applied to a facility by an agency of the federal government or another state agency;

3. a deficiency; or

4. an immediate jeopardy determination.

*Secretary*—the *secretary* of DHH or his/her designee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.11, 40:2009.23, 40:2199 and 40:2199.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3077 (November 2013).

## **Subchapter B. Sanctions and Standards for the Imposition of Sanctions**

### **§4611. General Provisions**

A. Any health care facility found to be in violation of any state or federal statute, regulation, or any department rule, adopted in accordance with the APA, governing the administration and operation of the facility may be sanctioned as provided in this Chapter.

B. Unless otherwise prohibited by federal law or regulation, the department may impose one or more of the following sanctions:

1. civil fine(s);

2. denial of Medicaid payment with respect to any individual admitted to, or provided services by, a facility;

3. denial of new admissions into the facility or by the provider;

4. removal from the freedom of choice list;

5. transfer of clients receiving services;

6. suspension of license;

7. monitoring;

8. special staffing requirements;

9. temporary management;
10. revocation of license;
11. denial of license renewal; or
12. any and all sanctions allowed under federal or state law or regulations, including but not limited to:

a. sanctions authorized under the medical assistance programs integrity law (MAPIL), pursuant to R.S. 46:437.1 et seq.;

b. the surveillance and utilization review systems (SURS) rule, pursuant to LAC 50:I, Chapter 41; or

c. any successor statutes or rules.

C. Considerations. When determining whether to impose a sanction, the department may consider some or all of the following factors:

1. whether the violations pose an immediate threat to the health or safety of the client(s);
2. the duration of the violation(s);
3. whether the violation, or one that is substantially similar, has previously occurred during the last three consecutive surveys;
4. the facility's history of survey compliance;
5. the sanction most likely to cause the facility to come into compliance in the shortest amount of time;
6. the severity of the violation if it does not pose an immediate threat to health and safety;
7. the "good faith" exercised by the facility in attempting to stay in compliance;
8. the financial benefit to the facility of committing or continuing the violation;
9. whether the violation is a repeat violation;
10. whether the facility interfered or hindered the department's investigation or survey process;
11. whether the facility has the governance or institutional control to maintain compliance; and
12. such other factors as the department deems appropriate.

D. The department shall determine whether a violation is a repeat violation and sanction the provider accordingly.

E. The department reserves the right to issue more than one sanction for each violation committed by a facility.

F. Any facility sanctioned under this Rule and found to have a violation that poses a threat to the health, safety, rights, or welfare of a client may have additional actions, such as criminal charges, brought against it under another applicable law, statute or regulation.

G. Unless otherwise provided for in state law or statute, if the secretary determines that the violations committed by the facility pose an imminent or immediate threat to the health, welfare or safety of any client receiving services, the imposition of the sanction may be immediate and may be enforced during the pendency of the administrative appeal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.11, 40:2009.23, 40:2199 and 40:2199.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3078 (November 2013).

#### **§4613. Civil Fines**

##### **A. Class A Violations**

1. Civil fines for class A violations shall not exceed \$2,500 for the first violation and shall not exceed \$5,000 per day for repeat violations.

2. The aggregate fines assessed for class A repeat violations shall not exceed \$20,000 in any one calendar month.

##### **B. Class B Violations**

1. Civil fines for class B violations shall not exceed \$1,500 for the first violation and shall not exceed \$3,000 per day for repeat violations.

2. The aggregate fines assessed for class B repeat violations shall not exceed \$15,000 in any one calendar month.

##### **C. Class C Violations**

1. Civil fines for class C violations shall not exceed \$1,000 for the first violation and shall not exceed \$2,000 per day for repeat violations.

2. A facility may elect to pay 50 percent of the civil fine imposed for a class C violation in exchange for waiving its right to an administrative reconsideration and appeal if it submits, and HSS receives, the following within 30 days of the facility's receipt of the civil fine notice:

a. payment of 50 percent of the civil fine imposed; and

b. the facility's written waiver of the right to an administrative reconsideration and appeal on the form provided by DHH.

##### **D. Class D Violations**

1. Civil fines for class D violations shall not exceed \$100 per day for the first violation and shall not exceed \$250 per day for repeat violations.

##### **E. Class E Violations**

1. Civil fines for class E violations shall not exceed \$50 for the first violation and shall not exceed \$100 for repeat violations.

##### **F. Determination of the Amount of Civil Fines**

1. In establishing the amount of civil fines to be imposed against the provider, the department may consider:

a. all relevant aggravating circumstances, including, but not limited to:

i. whether the violation resulted from intentional or reckless conduct by the provider;

ii. the pervasiveness of the violation;

iii. the duration of the violation; and/or

iv. the extent of actual or potential harm to clients; and

b. all relevant mitigating circumstances, including, but not limited to:

i. whether the provider had taken steps to prevent the violation; and/or

ii. whether the provider had implemented an effective corporate compliance program prior to the violation.

2. The aggregate fines assessed for any class C, D and E violations shall not exceed \$5,000 in any one calendar month.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.11, 40:2009.23, 40:2199 and 40:2199.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3079 (November 2013).

#### **§4615. Denial of Medicaid Payment**

A. The department may impose the sanction of "denial of Medicaid payment" with respect to any individual admitted

to or provided services by a facility for any violation of statute, rule or regulation including, but not limited to:

1. a violation of a rule or regulation that creates a condition or occurrence relating to the maintenance and/or operation of a facility which results in death or serious harm to a resident, patient or client;

2. a violation of a rule or regulation in which a condition or occurrence relating to the maintenance and/or operation of a facility is created and results in the substantial probability of death or serious physical or mental harm to a resident, patient or client will result from the violation;

3. a repeat violation of a rule or regulation in which a condition or occurrence relating to the maintenance and/or operation of a facility creates a potential for harm by directly threatening the health, safety, rights, or welfare of a client; or

4. more than two substantiated complaint surveys in two years.

B. This sanction shall remain in effect until:

1. the department determines that the facility is in compliance with the requirements; and

2. the department has provided notice to the facility of its compliance and the lifting of the sanction.

C. The department has the discretion to apply this sanction to new admissions only.

D. The facility shall notify all clients and all potential new clients of the imposition of this sanction.

E. The facility is prohibited from seeking reimbursement from a Medicaid recipient for services provided during the imposition of this sanction.

F. This sanction may be used in conjunction with other sanctions including, but not limited to, removal from the freedom of choice list and transfer of clients to another facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.11, 40:2009.23, 40:2199 and 40:2199.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3079 (November 2013).

#### **§4617. Denial of New Admissions**

A. The department may impose the sanction of "denial of new admissions." Denial of new admissions prohibits a new client from being admitted to a facility or any new client from receiving services from a facility during the term of the sanction.

B. The department may impose the sanction of denial of new admission for any violation of statute, rule or regulation including, but not limited to:

1. a violation of a rule or regulation that creates a condition or occurrence relating to the maintenance and/or operation of a facility which results in death or serious harm to a resident, patient or client;

2. a violation of a rule or regulation in which a condition or occurrence relating to the maintenance and/or operation of a facility is created and results in the substantial probability of death or serious physical or mental harm to a resident, patient or client will result from the violation;

3. a repeat violation of a rule or regulation in which a condition or occurrence relating to the maintenance and/or operation of a facility creates a potential for harm by directly threatening the health, safety, rights, or welfare of a client; or

4. more than two substantiated complaint surveys in two years.

C. The facility must provide notice of the imposition of the sanction and its effective date to all potential new admissions and to health care providers who have transferred, or it reasonably believes may transfer, a client into the sanctioned facility.

D. The sanction shall remain in effect until:

1. the department determines that the facility is in compliance with the requirements; and

2. the facility has received notice of its compliance and the lifting of the sanction.

E. This sanction may be used in conjunction with other sanctions, including removal from the freedom of choice list.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.11, 40:2009.23, 40:2199 and 40:2199.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3080 (November 2013).

#### **§4619. Removal from the Freedom of Choice List**

A. The department may impose the sanction of "removal from the freedom of choice list" to a facility placed on a freedom of choice list. DHH may impose this sanction for any violation including, but not limited to:

1. a violation of a rule or regulation that creates a condition or occurrence relating to the maintenance and/or operation of a facility which results in death or serious harm to a resident, patient or client;

2. a violation of a rule or regulation in which a condition or occurrence relating to the maintenance and/or operation of a facility is created and results in the substantial probability of death or serious physical or mental harm to a resident, patient or client;

3. a repeat violation of a rule or regulation in which a condition or occurrence relating to the maintenance and/or operation of a facility creates a potential for harm by directly threatening the health, safety, rights, or welfare of a client; or

4. more than two substantiated complaint surveys in two years.

B. The sanction of removal from the freedom of choice list shall remain in effect until:

1. the department determines that the facility is in compliance with the requirements; and

2. the facility has received notice of its compliance and the lifting of the sanction.

C. This sanction may be used in conjunction with another sanction, including denial of new admissions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.11, 40:2009.23, 40:2199 and 40:2199.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3080 (November 2013).

#### **§4621. Transfer of Clients Receiving Services**

A. The department may impose the sanction of "transfer of clients receiving services" provided by a facility. This sanction may be imposed for any violation of statute, rule or regulation including but not limited to:

1. a violation of a rule or regulation that creates a condition or occurrence relating to the maintenance and/or operation of a facility which results in death or serious harm to a resident, patient or client;

2. a violation of a rule or regulation in which a condition or occurrence relating to the maintenance and/or operation of a facility is created and results in the substantial

probability of death, serious physical harm or mental harm to a resident, patient or client;

3. a repeat violation of a rule or regulation in which a condition or occurrence relating to the maintenance and/or operation of a facility creates a potential for harm by directly threatening the health, safety, rights, or welfare of a client;

4. when there is an imminent threat to the health, safety and welfare of the facility's clients; or

5. more than two substantiated complaint surveys in two years.

B. This sanction may be imposed in conjunction with any other sanctions including, but not limited to, the following:

1. license suspension;

2. monitoring;

3. license revocation; and/or

4. denial of Medicaid payment with respect to any individual admitted to or provided services by a facility.

C. The sanction of transfer of clients shall remain in effect until:

1. the department determines that the facility is in compliance with the requirements; and

2. the facility has received notice of its compliance and the lifting of the sanction from the department.

D. The facility shall:

1. assist in the safe and orderly transfer of its clients to other facilities;

2. prohibit any action(s) that would prevent or impede the transfer of its clients;

3. maintain the needs of its clients until the transfer is complete; and

4. update the client's treatment plan and other records as necessary in preparation for the transfer or discharge of its client.

E. The facility, with assistance from the department, shall notify the clients of the transfer sanction and the transfer procedures. The department will identify similar facilities in close proximity to accommodate the clients being transferred.

F. At a minimum, the facility shall provide, at the facility's expense:

1. a copy of the current active treatment plan;

2. current orders; and

3. any other pertinent medical records to the facility accepting its transferred clients in an effort to achieve the seamless continuum of care.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.11, 40:2009.23, 40:2199 and 40:2199.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3080 (November 2013).

#### **§4623. License Suspension**

A. Unless otherwise provided by federal or state law, the department may impose a suspension of a license if the department determines that the violations committed by the facility pose an imminent or immediate threat to the health, welfare or safety of its clients.

B. The sanction of license suspension shall remain in effect until the department determines that the facility is in compliance with the requirements, and has provided notice of compliance and the lifting of the suspension to the facility.

C. The imposition or lifting of the suspension does not affect the imposition of other sanctions.

D. If the license suspension is reversed during the appeal process, the facility's license will be re-instated or granted upon the payment of any licensing fees, outstanding sanctions or other fees due to the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.11, 40:2009.23, 40:2199 and 40:2199.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3081 (November 2013).

#### **§4625. Monitoring**

A. The department may impose the sanction of monitoring. The facility is responsible for the cost of the monitoring.

B. Monitoring may be imposed:

1. when the facility is noncompliant with any law, statute, rule or regulation and is in the process of correcting deficiencies to achieve such compliance;

2. when the facility was previously found to be noncompliant with any law, statute, rule or regulation, has corrected deficiencies to achieve such compliance, and verification of continued compliance is indicated; or

3. when the department has reason to question the compliance of the facility with any law, statute, rule or regulation;

4. while a facility is instituting improvements; or

5. while a facility is in the process of closing.

C. Monitoring may include:

1. periodic unannounced visits by a surveyor;

2. on-site full time monitoring by surveyors to observe all phases of the facility's operations; or

3. on-site visits as deemed necessary by the department.

D. The department may maintain and utilize a specialized team of professionals, such as an attorney, auditor or health care professional, for the purpose of identifying, surveying, gathering and preserving evidence, and carrying out appropriate enforcement actions against facilities being monitored.

E. The sanction of monitoring shall remain in effect until:

1. the department determines that the facility is in compliance with the requirements and will remain in compliance with such requirements; and

2. the facility has received notice of compliance and the lifting of the sanction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.11, 40:2009.23, 40:2199 and 40:2199.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3081 (November 2013).

#### **§4627. Special Staffing Requirements**

A. The department may require special staffing for the facility.

B. Special staffing may include, but is not limited to:

1. a consultant on client assessments or care planning;

2. an additional licensed nurse to provide treatments;

3. a consultant dietician;

4. a consultant pharmacist; or

5. medical records practitioner.

C. The department may impose the sanction of special staffing for any violation of statute, rule or regulation including, but not limited to:

1. a violation of a rule or regulation that creates a condition or occurrence relating to the maintenance and/or operation of a facility which results in death or serious harm to a resident, patient or client;

2. a violation of a rule or regulation in which a condition or occurrence relating to the maintenance and/or operation of a facility is created and results in the substantial probability of death or serious physical or mental harm to a resident, patient or client will result from the violation;

3. a repeat violation of a rule or regulation in which a condition or occurrence relating to the maintenance and/or operation of a facility creates a potential for harm by directly threatening the health, safety, rights, or welfare of a client;

4. at the discretion of the department, when there is a breakdown in the care and services at a facility and the efforts of the facility have not been successful in correcting the deficiencies; or

5. when there is an imminent threat to the health, safety and welfare of the facility's clients.

D. Any special staffing shall meet the requirements outlined in the letter from the department and be:

1. in addition to the staff already hired;

2. time limited;

3. compensated by the facility; and

4. approved by the department.

E. The sanction shall remain in effect until the department determines the facility:

1. is in compliance with requirements; and

2. has received notice of its compliance and the lifting of the sanction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.11, 40:2009.23, 40:2199 and 40:2199.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3081 (November 2013).

#### **§4629. Temporary Management**

A. The department may require the immediate appointment of a temporary manager, at the facility's expense, to:

1. oversee the operation of the facility; and

2. assure the health and safety of the facility's clients.

B. Temporary management may be imposed for any violation of statute, rule or regulation including, but not limited to:

1. a violation of a rule or regulation that creates a condition or occurrence relating to the maintenance and/or operation of a facility which results in death or serious harm to a resident, patient or client;

2. a violation of a rule or regulation in which a condition or occurrence relating to the maintenance and/or operation of a facility is created and results in the substantial probability of death, serious physical harm or mental harm to a resident, patient or client;

3. a repeat violation of a rule or regulation in which a condition or occurrence relating to the maintenance and/or operation of a facility creates a potential for harm by directly threatening the health, safety, rights, or welfare of a client;

4. when there is a breakdown in the care and services at a facility and the efforts of the facility have not been successful in correcting the deficiencies;

5. when a licensee or its management has abandoned its clients;

6. when a licensee or its management has abandoned the facility which jeopardizes the health, safety and/or welfare of the facility's clients; or

7. when a facility is closing within 30 calendar days and the department has reasonable cause to believe that inadequate arrangements have been made to relocate the clients and may result in adverse effects to the clients.

C. This sanction shall be enforced and in effect during the pendency of the facility's administrative reconsideration and/or appeal.

#### **D. Cost of Temporary Management**

1. The facility shall be responsible for all costs of temporary management.

2. The department shall undertake any means to recover the payment of temporary management including, but not limited to, withholding or recouping from the facility's Medicaid reimbursement.

3. Failure to reimburse the department for the cost of temporary management shall result in the facility's owners, managers, officers, directors and administrator being prohibited from operating, managing, directing or owning a licensed health care facility for a period of two years from the latter of the date the sanction is lifted or the date the sanction is upheld through the appeal process.

#### **E. Powers and Duties of the Temporary Manager**

1. The facility must provide the temporary manager with sufficient power and duties to address, correct and/or ameliorate the deficiencies that led to the imposition of the temporary management sanction.

2. The temporary manager's powers and duties are subject to the approval of the department.

F. Qualifications and Compensation of a Temporary Manager. The facility shall appoint a temporary manager who is:

1. qualified by education and experience to perform the duties required of the temporary management;

2. subject to the approval of the department; and

3. adequately compensated by the facility for the performance of his/her duties as temporary manager.

G. The department may end the temporary management of a facility when it determines that the facility is in compliance with the laws, rules or regulations for a sufficient time period as determined by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.11, 40:2009.23, 40:2199 and 40:2199.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3082 (November 2013).

#### **§4631. Denial of Renewal License and Revocation of License**

A. The department may deny an application to renew a license or may revoke a license pursuant to the process and procedures contained in the department's statutory and promulgated licensing standards applicable to each facility.

#### **B. Voluntary Non-Renewal**

1. If a facility fails to timely renew its license, the license expires on its face and is considered voluntarily surrendered.

2. There are no appeal rights for a voluntary surrender as this is a voluntary action on the part of the facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.11, 40:2009.23, 40:2199 and 40:2199.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3082 (November 2013).

### Subchapter C. Notice and Appeals

#### §4641. Notice of Sanctions and Appeals

A. Unless otherwise provided in the licensing standards or other promulgated state rule or regulation, the following notice and appeal procedures are applicable to all sanctions imposed by the department pursuant to a Louisiana state statute or regulation.

B. Notice to Facility of Sanctions. The department shall provide written notice to a health care facility of the imposition of a sanction. The notice shall contain the following information:

1. the nature of the violation(s) and whether the violation is a repeat violation;
2. the legal authority for the violation(s);
3. the sanction assessed for each violation and the effective date of the sanction;
4. notification that the facility has 10 calendar days from receipt of the notice within which to request an administrative reconsideration of the proposed sanction;
5. notification of the administrative reconsideration and/or administrative appeal procedures and the deadlines for each; and
6. notification that the department's decision becomes final and no administrative or judicial review may be obtained if the facility fails to timely request an administrative reconsideration and/or administrative appeal.

C. Waivers. When a civil fine for a class C violation is imposed, the facility may choose to waive its right to an administrative reconsideration and appeal hearing in exchange for paying 50 percent of the fine by submitting the waiver and payment to HSS within 30 days of receipt of the notice imposing the civil fine.

D. Administrative Reconsideration. The facility may request an administrative reconsideration of the department's decision to impose a sanction.

1. The facility's request for an administrative reconsideration must:
  - a. be in writing;
  - b. be received by HSS within 10 calendar days of the provider's receipt of the notice of the imposition of the sanction; and
  - c. include any documentation that demonstrates that the sanction was in error.
2. A reconsideration shall be conducted by designated employees of the department who did not participate in the initial decision to recommend imposition of the sanction.
3. Correction of the deficiency or violation cited for imposition of the sanction shall not be the basis for an administrative reconsideration.
4. A reconsideration shall be conducted as a desk review unless the facility elects to make an oral presentation. The facility may request an oral presentation by notifying HSS within the deadline provided in the notice scheduling the administrative reconsideration.

5. A sanction may be confirmed, reduced or rescinded as a result of the administrative reconsideration. A deficiency may not be altered or rescinded as a result of the administrative reconsideration, except a deficiency may be

altered or rescinded in an administrative reconsideration of a revocation, denial of renewal or suspension.

6. A reconsideration decision shall be based upon all documents and the oral presentation furnished by the provider to the department at the time of the administrative reconsideration.

7. A reconsideration decision is final unless the facility timely requests an administrative appeal.

#### E. Administrative Appeal

1. The provider may request an administrative appeal of the department's decision to impose a sanction.

2. The issue that may be adjudicated in the appeal is the appropriateness of the sanction, including the classification of the violation(s).

3. A deficiency and its underlying facts may not be altered or rescinded as a result of the administrative appeal, except a state deficiency and its underlying facts may be altered or rescinded in an administrative appeal of a revocation, denial of renewal or suspension. For example, in an appeal of a fine due to a Class A violation, the DAL, after hearing the evidence, may decide to reduce the violation to a Class B and reduce the fine accordingly. However, the DAL may not reduce or alter the underlying deficiency on the survey report.

4. The facility's appeal request shall:

- a. be in writing;
- b. be received by the DAL within 30 days of the provider's receipt of the notice of the imposition of the sanction when no administrative reconsideration is requested, or when an administrative reconsideration is requested, within 30 days of the receipt of the notice of the results of the administrative reconsideration;
- c. state what the facility contests and the specific reasons for the disagreement; and
- d. shall include any documentation that demonstrates that the sanction was imposed in error.

5. In an appeal contesting a civil fine, the facility shall either post an appeal bond with the DAL as provided in R.S. 40:2009.11 for nursing facilities or R.S. 40:2199(D) for all other facilities, or the facility may choose to pay the fine and file a devolutive appeal.

6. Correction of the deficiency or violation cited for the imposition of the sanction will not be considered as a basis for the appeal.

7. The administrative hearing shall be limited to those issues specifically contested.

8. Except as hereinafter provided, when an administrative appeal is requested in a timely and proper manner, the DAL shall provide an administrative hearing in accordance with the provisions of the APA.

E. Judicial Review. The facility may request judicial review of the administrative appeal decision in the Nineteenth Judicial District Court in accordance with the APA.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.11, 40:2009.23, 40:2199 and 40:2199.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3083 (November 2013).

#### §4643. Administrative Appeal Process

A. Any party may appear and be heard at an appeal proceeding through an attorney at law or designated representative. A designated representative must file a

written notice of appearance on behalf of the facility identifying him/herself by name, address and telephone number, and identifying the party represented in addition to written authorization to appear on behalf of the facility.

B. The administrative appeal hearing shall be conducted by an administrative law judge (ALJ) or his or her successor from the DAL.

#### C. Preliminary Conferences

1. The ALJ may schedule a preliminary conference.

2. The purposes of a preliminary conference, if scheduled, include, but are not limited to the following:

- a. clarification, formulation and simplification of issues(s);
- b. resolution of matters in controversy;
- c. exchange of documents and information;
- d. stipulations of fact so as to avoid unnecessary introduction of evidence at the formal review;
- e. the identification of witnesses; and
- f. such other matters that may aid in the disposition of the issues.

3. When the ALJ schedules a preliminary conference, all parties shall be notified in writing. The notice shall direct any parties and their attorneys to appear at a specified date, time and place.

4. Where the preliminary conference resolves all or some matters in controversy, a summary of the findings agreed to at the conference shall be provided to all parties.

5. Where the preliminary conference does not resolve all matters in controversy, an administrative hearing shall be scheduled on those matters still in controversy.

#### D. Hearings

1. When an administrative hearing is scheduled, the facility and/or its attorney and the agency representative, shall be notified in writing of the date, time and place of the hearing.

2. Evidence. The taking of evidence shall be controlled in a manner best suited to ascertain the facts and safeguard the rights of the parties. Prior to taking evidence, the issues shall be explained, and the order in which the evidence will be received shall be explained.

- a. Testimony shall be taken only on oath, affirmation or penalty of perjury.
- b. Each party shall have the right to:
  - i. call and examine witnesses;
  - ii. introduce exhibits;
  - iii. question opposing witnesses and parties on any matter relevant to the issue even though the matter was not covered in the direct examination; and
  - iv. impeach any witness regardless of which party first called him to testify; and
  - v. rebut the evidence against him.
- c. The ALJ may question any party or witness and may admit any relevant and material evidence.
- d. Each party shall arrange for the presence of their witnesses at the hearing.
- e. A subpoena to compel the attendance of a witness may be issued by the ALJ upon written request by a party and showing the need therefore, or by the ALJ on his own motion.
- f. An application for a subpoena duces tecum for the production by a witness of books, papers, correspondence, memoranda, or other records shall be:

- i. in writing to the ALJ;
- ii. give the name and address of the person or entity upon whom the subpoena is to be served;
- iii. precisely describe the material that is desired to be produced;

iv. state the materiality thereof to the issue involved in the proceeding; and

v. include a statement indicating that to the best of the applicant's knowledge, the witness has such items in his possession or under his control.

3. The facility has the burden to prove that the imposition of a sanction was erroneous.

4. An audio recording of the hearing shall be made. A transcript will be prepared and reproduced at the request of a party to the hearing, provided he bears the cost of a copy of the transcript.

5. At the conclusion of the hearing, the ALJ may take the matter under submission.

6. Specific written findings as to each issue contested by the facility shall be made.

7. The ALJ has the authority to affirm, reverse, or modify the sanction(s) imposed by the department.

8. The ALJ does not have the authority to:

- a. rescind or amend any violation of federal law, statute or regulation found by DHH on behalf of CMS; or
- b. amend or rescind any violation of state law, statute, rule or manual in an appeal of a civil fine or of any other sanction, except license revocation, suspension and non-renewal.

9. Such findings shall be submitted in writing to the facility at its last known address and to the department and other affected parties.

#### E. Continuances

1. A hearing may be continued to another time or place, or a further hearing may be ordered by the ALJ on his own motion or upon showing of good cause, at the request of any party.

2. Where the ALJ determines that additional evidence is necessary for the proper determination of the case, he/she may, at his/her discretion:

- a. continue the hearing to a later date and order the party to produce additional evidence; or
- b. close the hearing and hold the record open in order to permit the introduction of additional documentary evidence.

3. Any evidence so submitted shall be made available to both parties and each party shall have the opportunity for rebuttal.

4. Written notice of the time and place of a continued or further hearing shall be provided to each party, except that when a continuance of further hearing is ordered during a hearing, oral notice of the time and place of the hearing may be given to each party present at the hearing.

F. If a facility representative fails to appear at a hearing, the appeal may be dismissed and the departmental findings made final. A copy of the decision shall be mailed to each party.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.11, 40:2009.23, 40:2199 and 40:2199.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3083 (November 2013).

## **Subchapter D. Enforcement of Sanctions**

### **§4651. Enforcement of Sanctions/Collection of Fines**

A. The decision to impose a sanction(s), except those classified as immediate, is final when:

1. an administrative appeal is not requested within the specified time limit;
2. the facility agrees to pay the fine or to comply with the sanction;
3. the administrative appeal affirms the department's fine or sanction and the time for seeking judicial review has expired; or
4. the judicial review or appeal affirms the fine or sanction and the deadline for seeking further review expires.

B. Civil Fines. When a fine becomes final, the facility shall do one of the following:

1. make payment in full within 10 days of the date the fine becomes final; or
2. request a payment schedule, in light of a documented hardship, within 10 calendar days of the fine becoming final.

C. Interest shall begin to accrue, at the current judicial rate, on the day following the date on which any fine becomes due and payable.

D. Failure to Make Payment of Assessed Fines. When the assessed fine is not received within the prescribed time period and the facility has not arranged for a payment schedule, the department may:

1. deduct the full amount with accrued interest from funds otherwise due to a Medicaid provider as Medicaid reimbursement; or
2. institute civil action as necessary to collect the fines due if the provider is not a Medicaid provider.

E. The facility is prohibited from:

1. claiming imposed fines and/or interest as reimbursable costs to Medicaid or Medicare; and
2. increasing charges to clients as a result of civil fines and/or interest imposed by DHH.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.11, 40:2009.23, 40:2199 and 40:2199.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3085 (November 2013).

## **Subchapter E. Funds**

### **§4661. Nursing Home Residents' Trust Fund**

A. The department shall deposit civil fines and the interest collected from nursing homes into the Nursing Home Residents' Trust Fund, hereafter referred to as trust fund.

B. The secretary shall administer the trust fund.

C. The monies in the trust fund shall be subject to annual appropriation and shall be used solely as mandated by the Omnibus Budget Reconciliation Act of 1987 (P.L. 100-203) for any of the following purposes:

1. to protect the health or property of residents of nursing homes which the department finds deficient;
2. to pay for the costs of relocation of residents to other facilities;
3. to maintain operation of a facility pending correction of deficiencies or closure;
4. to reimburse residents for personal funds lost;
5. to allow the department to use the funds for education to improve the health and welfare of residents;

6. to reimburse a nursing home(s) for evacuation expenses, subject to approval by the federal government; and

7. any other purpose approved by CMS.

D. Request for monies from the trust fund shall be made in writing to the department. All expenditures are subject to the approval of CMS.

E. Monies from the trust fund shall be utilized only to the extent that private or public funds, including funds available under Title XVIII and Title XIX of the Social Security Act, are not available or are not sufficient to meet the expenses of the facility.

F. The department is hereby authorized to enter into cooperative endeavor agreements with public and private entities for the approved expenditure of monies in the trust fund that achieve the purpose of the fund.

G. The existence of the trust fund shall not make the department responsible for the maintenance of residents of a nursing home facility or maintenance of the facility itself.

H. The department has the discretion to require repayment of a disbursement from the trust fund.

1. If required, the terms of repayment of monies disbursed shall be determined by the secretary and may, where appropriate, be set forth in a contract signed by the secretary and the applicant or other party responsible for repayment.

2. Failure to repay the funds according to the established terms of repayment shall preclude future disbursements to the applicant from the trust fund until all monies are repaid.

3. Monies due and owing to reimburse the trust fund shall accrue interest at the current judicial interest rate.

4. If a nursing home fails to repay the funds according to the established terms of repayment, the department may recoup the amount of disbursement not repaid by a nursing home from the nursing home's Medicaid payments or from any other payments owed to the nursing home from the department.

5. All monies collected pursuant to a repayment agreement or by recoupment shall be treated in the same manner as a collected civil fine.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.11, 40:2009.23, 40:2199 and 40:2199.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3085 (November 2013).

### **§4663. Health Care Facility Fund**

A. The civil fines and interest collected from health care facilities, other than nursing homes, shall be deposited into the Health Care Facility Fund, hereafter referred to as trust fund.

B. The department has the exclusive use of the funds contained in the trust fund.

C. The monies in the trust fund shall be subject to annual appropriation by the legislature and shall be used exclusively for the following purposes:

1. the protection of health, welfare, rights or property of those receiving services from health care facilities;
2. the enforcement of sanctions against health care facilities;
3. the education, employment and training of employees, staff or other personnel of health care facilities; and/or

4. programs designed to improve the quality of care in health care facilities.

D. The Health Care Facility Fund may not be used to fund re-occurring programs.

E. The department is hereby authorized to enter into cooperative endeavor agreements with public and private entities for the approved expenditure of monies in the trust fund that achieve the purpose of the fund.

F. The department has the discretion to require repayment of a disbursement from the trust fund.

1. If required, the terms of repayment of monies disbursed shall be determined by the secretary and may, where appropriate, be set forth in a contract signed by the secretary and the applicant or other party responsible for repayment.

2. Failure to repay the funds according to the established terms of repayment shall prevent future disbursements to the applicant from the trust fund until all monies are repaid.

3. Monies due and owing according to the established terms of repayment shall accrue interest at the current judicial interest rate.

4. If a facility fails to repay the funds according to the established terms of repayment, the department may recoup the amount of disbursement not repaid by a facility from the facility's Medicaid payments or from any other payments owed to the facility from the department.

5. All monies collected pursuant to a repayment agreement or by recoupment shall be treated in the same manner as a collected civil fine.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.11, 40:2009.23, 40:2199 and 40:2199.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3085 (November 2013).

#### **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part I. Administration**

#### **Subpart 7. Sanctions**

### **Chapter 55. Health Care Facility Sanctions**

#### **§5501. General Provisions**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2199.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 11:37 (January 1985), amended LR 11:770 (August 1985), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 18:189 (February 1992), LR 26:1448 (July 2000), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3086 (November 2013).

#### **§5503. Description of Violation and Applicable Civil Fines**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2199.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 11:37 (January 1985), amended LR 11:770 (August 1985), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 18:189 (February 1992), LR 26:1448 (July 2000), LR 31:1590 (July 2005), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3086 (November 2013).

#### **§5505. Notice and Appeal Procedure**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2199.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 11:37 (January 1985), amended LR 11:770 (August 1985), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 18:189 (February 1992), LR 26:1449 (July 2000), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3086 (November 2013).

#### **§5507. Collection of Fines**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2199.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 11:37 (January 1985), amended LR 11:770 (August 1985), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 18:189 (February 1992), amended LR 26:1450 (July 2000), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3086 (November 2013).

Kathy H. Kliebert  
Secretary

1311#086

#### **RULE**

### **Department of Health and Hospitals Bureau of Health Services Financing and Office of Aging and Adult Services**

Home- and Community-Based Services Waivers  
Support Coordination Standards for Participation  
(LAC 50:XXI.Chapter 5)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services have amended LAC 50:XXI.Chapter 5 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

#### **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE Part XXI. Home- and Community-Based Services Waivers**

#### **Subpart 1. General Provisions**

### **Chapter 5. Support Coordination Standards for Participation for Office of Aging and Adult Services Waiver Programs Subchapter A. General Provisions**

#### **§501. Introduction**

A. The Department of Health and Hospitals (DHH) establishes these minimum standards for participation which provides the core requirements for support coordination services provided under home- and community-based waiver programs administered by the Office of Aging and Adult Services (OAAS). OAAS must determine the adequacy of

quality and protection of waiver participants in accordance with the provisions of these standards.

B. OAAS, or its designee, is responsible for setting the standards for support coordination, monitoring the provisions of this Rule, and applying administrative sanctions for failures by support coordinators to meet the minimum standards for participation in serving participants of OAAS-administered waiver programs.

C. Support coordination are services that will assist participants in gaining access to needed waiver and other state plan services, as well as needed medical, social, educational, housing, and other services, regardless of the funding source for these services.

D. Upon promulgation of the final Rule governing these standards for participation, existing support coordination providers of OAAS-administered waiver programs shall be required to meet the requirements of this Chapter as soon as possible and no later than six months from the promulgation of this Rule.

E. If, in the judgment of OAAS, application of the requirements stated in these standards would be impractical in a specified case; such requirements may be modified by the OAAS assistant secretary to allow alternative arrangements that will secure as nearly equivalent provision of services as is practical. In no case will the modification afford less quality or protection, in the judgment of OAAS, than that which would be provided with compliance of the provisions contained in these standards.

1. Requirement modifications may be reviewed by the OAAS assistant secretary and either continued or canceled.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:3086 (November 2013).

### **§503. Certification Requirements**

A. All agencies that provide support coordination to OAAS-administered home- and community-based waivers must be certified by the Department of Health and Hospitals. It shall be unlawful to operate as a support coordination agency for OAAS-administered waivers without being certified by the department.

B. In order to provide support coordination services for OAAS-administered home- and community-based waiver programs, the agency must:

1. be certified and meet the standards for participation requirements as set forth in this Rule;
2. sign a performance agreement with OAAS;
3. assure staff attends all training mandated by OAAS;
4. enroll as a Medicaid support coordination agency in all regions in which it intends to provide services for OAAS-administered home- and community-based services; and
5. comply with all DHH and OAAS policies and procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:3087 (November 2013).

### **§505. Certification Issuance**

A. A certification shall:

1. be issued only to the entity named in the certification application;

2. be valid only for the support coordination agency to which it is issued after all applicable requirements are met;

3. enable the support coordination agency to provide support coordination for OAAS-administered home- and community-based waivers within the specified DHH region; and

4. be valid for the time specified on the certification, unless revoked, suspended, modified or terminated prior to that date.

B. Provisional certification may be granted when the agency has deficiencies which are not a danger to the health and welfare of clients. Provisional certification shall be issued for a period not to exceed 90 days.

C. Initial certification shall be issued by OAAS based on the survey report of DHH, or its designee.

D. Unless granted a waiver by OAAS, a support coordination agency shall provide such services only to waiver participants residing in the agency's designated DHH region.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:3087 (November 2013).

### **§507. Certification Refusal or Revocation and Fair Hearing**

A. A certification may be revoked or refused if applicable certification requirements, as determined by OAAS or its designee, have not been met. Certification decisions are subject to appeal and fair hearing, in accordance with R.S. 46:107(A)(3).

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:3087 (November 2013).

### **§509. Certification Inspections**

A. Certification inspections are usually annual but may be conducted at any time. No advance notice is given. Monitors must be given access to all of the areas in the facility and all relevant files and records.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:3087 (November 2013).

## **Subchapter B. Administration and Organization**

### **§513. Governing Body**

A. A support coordination agency shall have an identifiable governing body with responsibility for and authority over the policies and activities of the agency.

1. An agency shall have documents identifying all members of the governing body, their addresses, their terms of membership, officers of the governing body and terms of office of any officers.

2. The governing body shall be comprised of three or more persons and shall hold formal meetings at least twice a year.

3. There shall be written minutes of all formal meetings of the governing body and by-laws specifying frequency of meetings and quorum requirements.

B. The governing body of a support coordination agency shall:

1. ensure the agency's continual compliance and conformity with all relevant federal, state, local and municipal laws and regulations;
2. ensure that the agency is adequately funded and fiscally sound;
3. review and approve the agency's annual budget;
4. designate a person to act as administrator and delegate sufficient authority to this person to manage the agency;
5. formulate and annually review, in consultation with the administrator, written policies concerning the agency's philosophy, goals, current services, personnel practices, job descriptions and fiscal management;
6. annually evaluate the administrator's performance;
7. have the authority to dismiss the administrator;
8. meet with designated representatives of the department whenever required to do so;
9. inform the department, or its designee, prior to initiating any substantial changes in the services provided by the agency;
10. ensure that a continuous quality improvement (CQI) process is in effect; and
11. ensure that services are provided in a culturally sensitive manner as evidenced by staff trained in cultural awareness and related policies and procedures.

C. A support coordination agency shall maintain an administrative file that includes:

1. documents identifying the governing body;
2. a list of members and officers of the governing body, along with their addresses and terms of membership;
3. minutes of formal meetings and by-laws of the governing body, if applicable;
4. documentation of the agency's authority to operate under state law;
5. an organizational chart of the agency which clearly delineates the line of authority;
6. all leases, contracts and purchases-of-service agreements to which the agency is a party;
7. insurance policies;
8. annual budgets and, if performed, audit reports;
9. the agency's policies and procedures; and
10. documentation of any corrective action taken as a result of external or internal reviews.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:3087 (November 2013).

#### **§515. Business Location and Operations**

A. Each support coordination agency shall have a business location which shall not be in an occupied personal residence. The business location shall be in the DHH region for which the certification is issued and shall be where the agency:

1. maintains staff to perform administrative functions;
  2. maintains the agency's personnel records;
  3. maintains the agency's participant service records;
- and
4. holds itself out to the public as being a location for receipt of participant referrals.

B. The business location shall have:

1. a published nationwide toll-free telephone number answered by a person which is available and accessible 24 hours a day, 7 days a week, including holidays;
2. a published local business number answered by agency staff during the posted business hours;
3. a business fax number that is operational 24 hours a day, 7 days a week, including holidays;
4. internet access and a working e-mail address which shall be provided to OAAS;
5. hours of operation, which must be at least 30 hours a week, Monday-Friday, posted in a location outside of the business that is easily visible to persons receiving services and the general public; and
6. at least one staff person on the premises during posted hours of operation.

C. Records and other confidential information shall be secure and protected from unauthorized access.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:3088 (November 2013).

#### **§517. Financial Management**

A. The agency must establish a system of financial management and staffing to assure maintenance of complete and accurate accounts, books and records in keeping with generally accepted accounting principles.

B. The agency must not permit public funds to be paid or committed to be paid, to any person who is a member of the governing board or administrative personnel who may have any direct or indirect financial interest, or in which any of these persons serve as an officer or employee, unless the services or goods involved are provided at a competitive cost or under terms favorable to the agency. The agency shall have a written disclosure of any financial transaction with the agency in which a member of the governing board, administrative personnel, or his/her immediate family is involved.

C. The agency must obtain any necessary performance bonds and/or lines of credit as required by the department.

D. For the protection of its participants, staff, facilities, and the general public, the agency must have adequate and appropriate general and/or professional liability insurance as specified by OAAS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:3088 (November 2013).

#### **§519. Policy and Procedures**

A. The support coordination agency shall have written policies and procedures approved by the owner or governing body which must be implemented and followed that address at a minimum the following:

1. confidentiality and confidentiality agreements;
2. security of files;
3. publicity and marketing, including the prohibition of illegal or coercive inducement, solicitation and kickbacks;
4. personnel;
5. participant rights;

6. grievance procedures;
7. emergency preparedness;
8. abuse and neglect reporting;
9. critical incident reporting;
10. worker safety;
11. documentation; and
12. admission and discharge procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:3088 (November 2013).

### **§521. Organizational Communication**

A. The agency must establish procedures to assure adequate communication among staff to provide continuity of services to the participant and to facilitate feedback from staff, participants, families, and when appropriate, the community at large.

B. The agency must have brochures and make them available to OAAS or its designee. The brochures must include the following information:

1. that each participant has the freedom to choose their providers and that their choice of provider does not affect their eligibility for waiver, state plan, or support coordination services;
2. that a participant receiving support coordination through OAAS may contact the OAAS help line for information, assistance with, or questions about OAAS programs;
3. the OAAS help line number along with the appropriate OAAS regional office telephone numbers;
4. information, including the Health Standards Section complaint line, on where to make complaints against support coordinators, support coordination agencies, and providers; and
5. a description of the agency, services provided, current address, and the agency's local and nationwide toll-free number.

C. The brochure may also include the agency's experience delivering support coordination services.

D. The support coordination agency shall be responsible for:

1. obtaining written approval of the brochure from OAAS prior to distributing to applicants/participants of OAAS-administered waiver programs;
2. providing OAAS staff or its designee with adequate supplies of the OAAS-approved brochure; and
3. timely completing revisions to the brochure, as requested by OAAS, to accurately reflect all program changes as well as other revisions OAAS deems necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:3089 (November 2013).

### **Subchapter C. Provider Responsibilities**

#### **§525. General Provisions**

A. Any entity wishing to provide support coordination services for any OAAS-administered home- and community-based waiver program shall meet all of the standards for participation contained in this Rule, unless otherwise specifically noted within these provisions.

B. The support coordination agency shall also abide by and adhere to any federal, state law, Rule, policy, procedure, performance agreement, manual or memorandum pertaining to the provision of support coordination services for OAAS-administered home- and community-based waiver programs.

C. Failure to comply with the requirements of these standards for participation may result in sanctions including, but not limited to:

1. recoupment of funds;
2. cessation of linkages;
3. citation of deficient practice and plan of correction submission;
4. removal from the freedom of choice list; or
5. decertification as a support coordination agency for OAAS-administered home- and community-based waiver services.

D. A support coordination agency shall make any required information or records, and any information reasonably related to assessment of compliance with these requirements, available to the department.

E. Designated representatives of the department, in the performance of their mandated duties, shall be allowed by a support coordination agency to:

1. inspect all aspects of a support coordination agency operations which directly or indirectly impact participants; and
2. conduct interviews with any staff member or participant of the agency.

F. A support coordination agency shall, upon request by the department, make available the legal ownership documents of the agency.

G. Support coordination agencies must comply with all of the department's systems/software requirements.

H. Support coordination agencies shall, at a minimum:

1. maintain and/or have access to a comprehensive resource directory containing all of the current inventory of existing formal and informal resources that identifies services within the geographic area which shall address the unique needs of participants of OAAS-administered home- and community-based waiver programs;
2. establish linkages with those resources;
3. demonstrate knowledge of the eligibility requirements and application procedures for federal, state and local government assistance programs, which are applicable to participants of OAAS-administered home- and community-based waiver programs;
4. employ a sufficient number of support coordinators and supervisory staff to comply with OAAS staffing, continuous quality improvement (CQI), timeline, workload, and performance requirements;
5. demonstrate administrative capacity and the financial resources to provide all core elements of support coordination services and ensure effective service delivery in accordance with programmatic requirements;
6. assure that all agency staff is employed in accordance with Internal Revenue Service (IRS) and Department of Labor regulations (subcontracting of individual support coordinators and/or supervisors is prohibited);
7. have appropriate agency staff attend trainings, as mandated by DHH and OAAS;

8. have a documented CQI process;
9. document and maintain records in accordance with federal and state regulations governing confidentiality and program requirements;

10. assure each participant has freedom of choice in the selection of available qualified providers and the right to change providers in accordance with program guidelines; and

11. assure that the agency and support coordinators will not provide both support coordination and Medicaid-reimbursed direct services to the same participant(s).

I. Abuse and Neglect. Support coordination agencies shall establish policies and procedures relative to the reporting of abuse and neglect of participants, pursuant to the provisions of R.S. 15:1504-1505, R.S. 40:2009.20 and any subsequently enacted laws. Providers shall ensure that staff complies with these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:3089 (November 2013).

### **§527. Support Coordination Services**

A. Support coordination is services that will assist participants in gaining access to needed waiver and other state plan services, as well as needed medical, social, educational, housing and other services, regardless of the funding source for these services. Support coordination agencies shall be required to perform the following core elements of support coordination services:

1. intake;
2. assessment;
3. plan of care development and revision;
4. linkage to direct services and other resources;
5. coordination of multiple services among multiple providers;
6. monitoring/follow-up;
7. reassessment;
8. evaluation and re-evaluation of level of care and need for waiver services;
9. ongoing assessment and mitigation of health, behavioral and personal safety risk;
10. responding to participant crisis;
11. critical incident management; and
12. transition/discharge and closure.

B. The support coordination agency shall also be responsible for assessing, addressing and documenting delivery of services, including remediation of difficulties encountered by participants in receiving direct services.

C. A support coordination agency shall not refuse to serve, or refuse to continue to serve, any individual who chooses/has chosen its agency unless there is documentation to support an inability to meet the individual's health and welfare needs, or all previous efforts to provide service and supports have failed and there is no option but to refuse services.

1. Before an agency can refuse to provide or to continue to provide services to an individual, OAAS must be immediately notified of the circumstances surrounding a refusal by a support coordination agency to provide/continue to provide services along with supporting documentation.

2. This requirement can only be waived by OAAS.

D. Support coordination agencies must establish and maintain effective communication and good working relationships with providers of services to participants served by the agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:3090 (November 2013).

### **§529. Transfers and Discharges**

A. All participants of OAAS-administered waiver programs must receive support coordination services. However, a participant has the right to choose a support coordination agency. This right includes the right to be discharged from his/her current support coordination agency and be transferred to another support coordination agency.

B. Upon notice by the participant or his/her authorized representative that the participant has selected another support coordination agency or the participant has decided to discontinue participation in the waiver program, the agency shall have the responsibility of planning for the participant's transfer or discharge.

C. The support coordination agency shall also have the responsibility of planning for a participant's transfer when the support coordination agency ceases to operate or when the participant moves from the geographical region serviced by the support coordination agency.

D. The transfer or discharge responsibilities of the support coordinator shall include:

1. holding a transfer or discharge planning conference with the participant, his/her family, providers, legal representative and advocate, if such are known, in order to facilitate a smooth transfer or discharge, unless the participant declines such a meeting;
2. providing a current plan of care to the receiving support coordination agency (if applicable); and
3. preparing a written discharge summary. The discharge summary shall include, at a minimum, a summary on the health, behavioral, and social issues of the client and shall be provided to the receiving support coordination agency (if applicable).

E. The written discharge summary, along with the current plan of care, shall be completed and provided to the receiving support coordination agency and OAAS regional office, within five working days of any of the following:

1. notice by the participant or authorized representative that the participant has selected another support coordination agency;
2. notice by the participant or authorized representative that the participant has decided to discontinue participation in the waiver program;
3. notice by the participant or authorized representative that the participant will be transferring to a DHH geographic region not serviced by his/her current support coordination agency; or
4. notice from OAAS or its designee that "good cause" has been established by the support coordination agency to discontinue services.

F. The support coordination agency shall not coerce the participant to stay with the support coordination agency or interfere in any way with the participant's decision to transfer. Failure to cooperate with the participant's decision

to transfer to another support coordination agency will result in adverse action by the department.

G. If a support coordination agency ceases to operate, the agency must give OAAS at least 60 days written notice of its intent to close. Where transfer of participants is necessary due to the support coordination agency closing, the written discharge summary for all participants served by the agency shall be completed within 10 working days of the notice to OAAS of the agency's intent to close.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:3090 (November 2013).

### **§531. Staffing Requirements**

A. Agencies must maintain sufficient staff to comply with OAAS staffing, timeline, workload, and performance requirements. This includes, but is not limited to, including sufficient support coordinators and support coordinator supervisors that have passed all of the OAAS training and certification requirements. In no case may an agency have less than one certified support coordination supervisor and less than one certified support coordinator. Agencies may employ staff who are not certified to perform services or requirements other than assessment and care planning.

B. Agencies must maintain sufficient supervisory staff to comply with OAAS supervision and CQI requirements. Support coordination supervisors must be continuously available to support coordinators by telephone.

1. Each support coordination agency must have and implement a written plan for supervision of all support coordination staff.

2. Each supervisor must maintain a file on each support coordinator supervised and hold documented supervisory sessions and evaluate each support coordinator at least annually.

C. Agencies shall employ or contract a licensed registered nurse to serve as a consultant. The nurse consultant shall be available a minimum of 16 hours per month.

D. Agencies shall ensure that staff is available at times which are convenient and responsive to the needs of participants and their families.

E. Support coordinators may only carry caseloads that are composed exclusively of OAAS participants. Support coordination supervisors may only supervise support coordinators that carry caseloads that are composed exclusively of OAAS participants.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:3091 (November 2013).

### **§533. Personnel Standards**

A. Support coordinators must meet one of the following requirements:

1. a bachelor's or master's degree in social work from a program accredited by the Council on Social Work Education;

2. a diploma, associate's bachelor's or master's degree in nursing (RN) currently licensed in Louisiana;

3. a bachelor's or master's degree in a human service related field which includes:

- a. psychology;
- b. education;
- c. counseling;
- d. social services;
- e. sociology;
- f. philosophy;
- g. family and participant sciences;
- h. criminal justice;
- i. rehabilitation services;
- j. substance abuse treatment;
- k. gerontology; and
- l. vocational rehabilitation; or

4. a bachelor's degree in liberal arts or general studies with a concentration of at least 16 hours in one of the fields in §533.A.3.a.-l. of this Section.

B. Support coordination supervisors must meet the following requirements:

1. a bachelor's or master's degree in social work from a program accredited by the Council on Social Work Education and two years of paid post degree experience in providing support coordination services;

2. a diploma, associate's, bachelor's or master's degree in nursing (RN), currently licensed in Louisiana, and two years of paid post degree experience in providing support coordination services;

3. a bachelor's or master's degree in a human service related field which includes: psychology, education, counseling, social services, sociology, philosophy, family and participant sciences, criminal justice, rehabilitation services, child development, substance abuse, gerontology, and vocational rehabilitation and two years of paid post degree experience in providing support coordination services; or

4. a bachelor's degree in liberal arts or general studies with a concentration of at least 16 hours in one of the following fields: psychology, education, counseling, social services, sociology, philosophy, family and participant sciences, criminal justice, rehab services, child development, substance abuse, gerontology, and vocational rehabilitation and two years of paid post degree experience in providing support coordination services.

C. Documentation showing that personnel standards have been met must be placed in the individual's personnel file.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:3091 (November 2013).

### **§535. Employment and Recruitment Practices**

A. A support coordination agency shall have written personnel policies, which must be implemented and followed, that include:

1. a plan for recruitment, screening, orientation, ongoing training, development, supervision and performance evaluation of staff members;

2. a policy to prevent discrimination and comply with all state and federal employment practices and laws;

3. a policy to recruit, wherever possible, qualified persons of both sexes representative of cultural and racial groups served by the agency, including the hiring of qualified persons with disabilities;

4. written job descriptions for each staff position, including volunteers;

5. an employee grievance procedure that allows employees to make complaints without fear of retaliation; and

6. abuse reporting procedures that require all employees to report any incidents of abuse or mistreatment, whether that abuse or mistreatment is done by another staff member, a family member, a participant or any other person.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:3091 (November 2013).

### **§537. Orientation and Training**

A. Support coordinators must receive necessary orientation and periodic training on the provision of support coordination services arranged or provided through their agency at the agency's expense.

B. Orientation of at least 16 hours shall be provided by the agency to all staff, volunteers and students within five working days of employment which shall include, at a minimum:

1. core OAAS support coordination requirements;
  2. policies and procedures of the agency;
  3. confidentiality;
  4. documentation of case records;
  5. participant rights protection and reporting of violations;
  6. abuse and neglect policies and procedures;
  7. professional ethics;
  8. emergency and safety procedures;
  9. infection control, including universal precautions;
- and
10. critical incident reporting.

C. In addition to the minimum 16 hours of orientation, all newly hired support coordinators must receive a minimum of 16 hours of training during the first 90 calendar days of employment which is related to the specific population served and knowledge, skills and techniques necessary to provide support coordination to the specific population. This training must be provided by an individual or organization with demonstrated knowledge of the training topic and the target population. Such resources may be identified and/or mandated by OAAS. These 16 hours of training must include, at a minimum:

1. fundamentals of support coordination;
2. interviewing techniques;
3. data management and record keeping;
4. communication skills;
5. risk assessment and mitigation;
6. person centered planning;
7. emergency preparedness planning;
8. resource identification;
9. back-up staff planning;
10. critical incident reporting; and
11. continuous quality improvement.

D. In addition to the agency-provided training requirements set forth above, support coordinators and support coordination supervisors must successfully complete all OAAS assessment and care planning training.

E. No support coordinator shall be given sole responsibility for a participant until all of the required

training is satisfactorily completed and the employee possesses adequate abilities, skills, and knowledge of support coordination.

F. All support coordinators and support coordination supervisors must complete a minimum of 40 hours of training per year. For new employees, the orientation cannot be counted toward the 40 hour minimum annual training requirement. The 16 hours of initial training for support coordinators required in the first 90 days of employment may be counted toward the 40 hour minimum annual training requirement. Routine supervision shall not be considered training.

G. A newly hired or promoted support coordination supervisor must, in addition to satisfactorily completing the orientation and training set forth above, also complete a minimum of 24 hours on all of the following topics prior to assuming support coordination supervisory responsibilities:

1. professional identification/ethics;
2. process for interviewing, screening and hiring staff;
3. orientation/in-service training of staff;
4. evaluating staff;
5. approaches to supervision;
6. managing workload and performance requirements;
7. conflict resolution;
8. documentation;
9. population specific service needs and resources;
10. participant evacuation tracking; and
11. the support coordination supervisor's role in CQI systems.

H. Documentation of all orientation and training must be placed in the individual's personnel file. Documentation must include an agenda and the name, title, agency affiliation of the training presenter(s) and other sources of training.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:3092 (November 2013).

### **§539. Participant Rights**

A. Unless adjudicated by a court of competent jurisdiction, participants served by a support coordination agency shall have the same rights, benefits, and privileges guaranteed by the constitution and the laws of the United States and Louisiana.

B. There shall be written policies and procedures that protect the participant's welfare, including the means by which the protections will be implemented and enforced.

C. Each support coordination agency's written policies and procedures, at a minimum, shall ensure the participant's right to:

1. human dignity;
2. impartial access to treatment regardless of race, religion, sex, ethnicity, age or disability;
3. cultural access as evidenced by:
  - a. interpretive services;
  - b. translated materials;
  - c. the use of native language when possible; and
  - d. staff trained in cultural awareness;
4. have sign language interpretation;
5. utilize service animals and/or mechanical aids and devices that assist those persons with special needs to achieve maximum service benefits;

6. privacy;
7. confidentiality;
8. access his/her records upon the participant's written consent for release of information;
9. a complete explanation of the nature of services and procedures to be received, including:
  - a. risks;
  - b. benefits; and
  - c. available alternative services;
10. actively participate in services, including:
  - a. assessment/reassessment;
  - b. plan of care development/revision; and
  - c. discharge;
11. refuse specific services or participate in any activity that is against their will and for which they have not given consent;
12. obtain copies of the support coordination agency's complaint or grievance procedures;
13. file a complaint or grievance without retribution, retaliation or discharge;
14. be informed of the financial aspect of services;
15. be informed of any third-party consent for treatment of services, if appropriate;
16. personally manage financial affairs, unless legally determined otherwise;
17. give informed written consent prior to being involved in research projects;
18. refuse to participate in any research project without compromising access to services;
19. be free from mental, emotional and physical abuse and neglect;
20. be free from chemical or physical restraints;
21. receive services that are delivered in a professional manner and are respectful of the participant's wishes concerning their home environment;
22. receive services in the least intrusive manner appropriate to their needs;
23. contact any advocacy resources as needed, especially during grievance procedures; and
24. discontinue services with one provider and freely choose the services of another provider.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:3092 (November 2013).

#### **§541. Grievances**

A. The support coordination agency shall establish and follow a written grievance procedure to be used to process complaints by participants, their family member(s), or a legal representative that is designed to allow participants to make complaints without fear of retaliation. The written grievance procedure shall be provided to the participant.

B. Grievances must be periodically reviewed by the governing board in an effort to promote improvement in these areas.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:3093 (November 2013).

#### **§543. Critical Incident Reporting**

A. Support coordination agencies shall report critical incidents according to established OAAS policy including timely entries into the designated DHH critical incident database.

B. Support coordination agencies shall perform the following critical incident management actions:

1. coordinate immediate action to assure the participant is protected from further harm and respond to any emergency needs of the participant;

2. continue to follow up with the direct services provider agency, the participant, and others, as necessary, and update the critical incident database follow-up notes until the incident is closed by OAAS;

3. convene any planning meetings that may be needed to resolve the critical incident or develop strategies to prevent or mitigate the likelihood of similar critical incidents from occurring in the future and revise the plan of care accordingly;

4. send the participant and direct services provider a copy of the incident participant summary within 15 days after final supervisory review and closure by the regional office; and

5. during the plan of care review process, perform an annual critical incident analysis and risk assessment and document within the plan of care strategies to prevent or mitigate the likelihood of similar future critical incidents.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:3093 (November 2013).

#### **§545. Participant Records**

A. Participant records shall be maintained in the support coordinator's office. The support coordinator shall have a current written record for each participant which shall include:

1. identifying data including:

- a. name;
- b. date of birth;
- c. address;
- d. telephone number;
- e. social security number; and
- f. legal status;

2. a copy of the participant's plan of care, as well as any revisions or updates to the plan of care;

3. required assessment(s) and any additional assessments that the agency may have performed, received, or are otherwise privy to;

4. written monthly, interim, and quarterly documentation according to current policy and reports of the services delivered for each participant for each visit and contact;

5. current emergency plan completed according to OAAS guidelines; and

6. current back-up staffing plan completed according to OAAS guidelines.

B. Support coordination agencies shall maintain participant records in readily accessible form for a period of six years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:3093 (November 2013).

#### **§547. Emergency Preparedness**

A. Support coordination agencies shall ensure that each participant has an individual plan for dealing with emergencies and disasters and shall assist participants in identifying the specific resources available through family, friends, the neighborhood, and the community. The support coordinator shall assess monthly whether the emergency plan information is current and effective and shall make changes accordingly.

B. A disaster or emergency may be a local, community-wide, regional, or statewide event. Disasters or emergencies may include, but are not limited to:

1. tornados;
2. fires;
3. floods;
4. hurricanes;
5. power outages;
6. chemical spills;
7. biohazards;
8. train wrecks; or
9. declared health crisis.

C. Support coordination agencies shall update participant evacuation tracking information and submit such to OAAS in the required format and timelines as described in the current OAAS policy for evacuation preparedness.

D. Continuity of Operations. The support coordination agency shall have an emergency preparedness plan to maintain continuity of the agency's operations in preparation for, during, and after an emergency or disaster. The plan shall be designed to manage the consequences of all hazards, declared disasters or other emergencies that disrupt the agency's ability to render services.

E. The support coordination agency shall follow and execute its emergency preparedness plan in the event of the occurrence of a declared disaster or other emergency.

F. The support coordinator shall cooperate with the department and with the local or parish Office of Homeland Security and Emergency Preparedness in the event of an emergency or disaster and shall provide information as requested.

G. The support coordinator shall monitor weather warnings and watches as well as evacuation orders from local and state emergency preparedness officials.

H. All agency employees shall be trained in emergency or disaster preparedness. Training shall include orientation, ongoing training, and participation in planned drills for all personnel.

I. Upon request by the department, the support coordination agency shall submit a copy of its emergency preparedness plan and a written summary attesting to how the plan was followed and executed. The summary shall contain, at a minimum:

1. pertinent plan provisions and how the plan was followed and executed;
2. plan provisions that were not followed;
3. reasons and mitigating circumstances for failure to follow and execute certain plan provisions;

4. contingency arrangements made for those plan provisions not followed; and

5. a list of all injuries and deaths of participants that occurred during execution of the plan, evacuation or temporary relocation including the date, time, causes, and circumstances of the injuries and deaths.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:3094 (November 2013).

#### **§549. Continuous Quality Improvement Plan**

A. Support coordination agencies shall have a continuous quality improvement plan which governs the agency's internal quality management activities.

B. The CQI plan shall demonstrate a process of continuous cyclical improvement and should utilize the Centers for Medicare and Medicaid Services' "DDRI" operative framework for quality reporting of the Medicaid home- and community-based services (HCBS) waivers. "DDRI" is comprised of the following four components which are a common vocabulary linking CMS expectations and state quality efforts:

1. design;
2. discovery;
3. remediation; and
4. improvement.

C. The CQI plan shall follow an evidence-based approach to quality monitoring with an emphasis on the assurances which the state must make to CMS. The assurances falling under the responsibility of support coordination are those of participant health and welfare, level of care determination, plan of care development, and qualified agency staff.

D. CQI plans shall include, at a minimum:

1. internal quality performance measures and valid sampling techniques to measure all of the OAAS support coordination monitoring review elements;
2. strategies and actions which remediate findings of less than 100 percent compliance and demonstrate ongoing improvement in response to internal and OAAS quality monitoring findings;
3. a process to review, resolve and redesign in order to address all systemic issues identified;
4. a process for obtaining input annually from the participant/guardian/authorized representatives and possibly family members to include, but not be limited to:
  - a. satisfaction surveys done by mail or phone; or
  - b. other processes for receiving input regarding the quality of services received;
5. a process for identifying on a quarterly basis the risk factors that affects or may affect the health or welfare of individuals being supported which includes, but is not limited to:
  - a. review and resolution of complaints;
  - b. review and resolution of incidents; and
  - c. the respective protective services' agency's investigations of abuse, neglect and exploitation;
6. a process to review and resolve individual participant issues that are identified; and

7. a process to actively engage all agency staff in the CQI plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:3094 (November 2013).

**§551. Support Coordination Monitoring**

A. Support coordination agencies shall offer full cooperation with the OAAS during the monitoring process. Responsibilities of the support coordination agency in the monitoring process include, but are not limited to:

1. providing policy and procedure manuals, personnel records, case records, and other documentation;
2. providing space for documentation review and support coordinator interviews;
3. coordinating agency support coordinator interviews; and
4. assisting with scheduling participant interviews.

B. There shall be an annual OAAS support coordination monitoring of each support coordination agency and the results of this monitoring will be reported to the support coordination agency along with required follow-up actions and timelines. All individual findings of noncompliance must be addressed, resolved and reported to OAAS within specified timelines. All recurrent problems shall be addressed through systemic changes resulting in improvement. Agencies which do not perform all of the required follow-up actions according to the timelines will be subject to sanctions of increasing severity as described in §525.C.1-5.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:3095 (November 2013).

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Kathy H. Kliebert  
Secretary

1311#087

**RULE**

**Department of Health and Hospitals  
Bureau of Health Services Financing**

Inpatient Hospital Services  
Neonatal and Pediatric Intensive Care Units and  
Outlier Payment Methodologies  
(LAC 50:V.953, 954, and 967)

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 50:V.953, 954 and 967 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part V. Hospital Services**

**Subpart 1. Inpatient Hospital Services**

**Chapter 9. Non-Rural, Non-State Hospitals**

**Subchapter B. Reimbursement Methodology**

**§953. Acute Care Hospitals**

A. - G.3. ...

H. Neonatal Intensive Care Units (NICU)

1. - 2. ...

3. Effective for dates of service on or after March 1, 2011, the per diem rates for Medicaid inpatient services rendered by NICU level III and NICU level III regional units, recognized by the department as such on December 31, 2010, shall be adjusted to include an increase that varies based on the following five tiers:

a. tier 1—if the qualifying hospital's average percentage exceeds 10 percent, the additional per diem increase shall be \$601.98;

b. tier 2—if the qualifying hospital's average percentage is less than or equal to 10 percent, but exceeds 5 percent, the additional per diem increase shall be \$624.66;

c. tier 3—if the qualifying hospital's average percentage is less than or equal to 5 percent, but exceeds 1.5 percent, the additional per diem increase shall be \$419.83;

d. tier 4—if the qualifying hospital's average percentage is less than or equal to 1.5 percent, but greater than 0 percent, and the hospital received greater than .25 percent of the outlier payments for dates of service in state fiscal year (SFY) 2008 and SFY 2009 and calendar year 2010, the additional per diem increase shall be \$263.33; or

e. tier 5—if the qualifying hospital received less than .25 percent, but greater than 0 percent of the outlier payments for dates of service in SFY 2008 and SFY 2009 and calendar year 2010, the additional per diem increase shall be \$35.

4. A qualifying hospital's placement into a tier will be determined by the average of its percentage of paid NICU Medicaid days for SFY 2010 dates of service to the total of all qualifying hospitals' paid NICU days for the same time period, and its percentage of NICU patient outlier payments made as of December 31, 2010 for dates of service in SFY 2008 and SFY 2009 and calendar year 2010 to the total NICU outlier payments made to all qualifying hospitals for these same time periods.

a. This average shall be weighted to provide that each hospital's percentage of paid NICU days will comprise 25 percent of this average, while the percentage of outlier payments will comprise 75 percent. In order to qualify for tiers 1-4, a hospital must have received at least .25 percent of outlier payments in SFY 2008, SFY 2009, and calendar year 2010.

b. SFY 2010 is used as the base period to determine the allocation of NICU and PICU outlier payments for hospitals having both NICU and PICU units.

c. If the daily paid outlier amount per paid NICU day for any hospital is greater than the mean plus one standard deviation of the same calculation for all NICU level III and NICU level III regional hospitals, then the basis for calculating the hospital's percentage of NICU patient outlier payments shall be to substitute a payment amount equal to the highest daily paid outlier amount of any hospital not

exceeding this limit, multiplied by the exceeding hospital's paid NICU days for SFY 2010, to take the place of the hospital's actual paid outlier amount.

NOTE: Children's specialty hospitals are not eligible for the per diem adjustments established in §953.H.3.

5. The department shall evaluate all rates and tiers two years after implementation.

I. Pediatric Intensive Care Unit (PICU)

1. - 2. ...

3. Effective for dates of service on or after March 1, 2011, the per diem rates for Medicaid inpatient services rendered by PICU level I and PICU level II units, recognized by the department as such on December 31, 2010, shall be adjusted to include an increase that varies based on the following four tiers:

a. tier 1—if the qualifying hospital's average percentage exceeds 20 percent, the additional per diem increase shall be \$418.34;

b. tier 2—if the qualifying hospital's average percentage is less than or equal to 20 percent, but exceeds 10 percent, the additional per diem increase shall be \$278.63;

c. tier 3—if the qualifying hospital's average percentage is less than or equal to 10 percent, but exceeds 0 percent and the hospital received greater than .25 percent of the outlier payments for dates of service in SFY 2008 and SFY 2009 and calendar year 2010, the additional per diem increase shall be \$178.27; or

d. tier 4—if the qualifying hospital received less than .25 percent, but greater than 0 percent of the outlier payments for dates of service in SFY 2008, SFY 2009 and calendar year 2010, the additional per diem increase shall be \$35.

4. A qualifying hospital's placement into a tier will be determined by the average of its percentage of paid PICU Medicaid days for SFY 2010 dates of service to the total of all qualifying hospitals' paid PICU days for the same time period, and its percentage of PICU patient outlier payments made as of December 31, 2010 for dates of service in SFY 2008 and SFY 2009 and calendar year 2010 to the total PICU outlier payments made to all qualifying hospitals for these same time periods.

a. This average shall be weighted to provide that each hospital's percentage of paid PICU days will comprise 25 percent of this average, while the percentage of outlier payments will comprise 75 percent. In order to qualify for Tiers 1 through 3, a hospital must have received at least .25 percent of outlier payments in SFY 2008, SFY 2009, and calendar year 2010.

b. SFY 2010 is used as the base period to determine the allocation of NICU and PICU outlier payments for hospitals having both NICU and PICU units.

c. If the daily paid outlier amount per paid PICU day for any hospital is greater than the mean plus one standard deviation of the same calculation for all PICU Level I and PICU Level II hospitals, then the basis for calculating the hospital's percentage of PICU patient outlier payments shall be to substitute a payment amount equal to the highest daily paid outlier amount of any hospital not exceeding this limit, multiplied by the exceeding hospital's paid PICU days for SFY 2010, to take the place of the hospital's actual paid outlier amount.

NOTE: Children's specialty hospitals are not eligible for the per diem adjustments established in §953.I.3.

5. The department shall evaluate all rates and tiers two years after implementation.

J. - N.2.b. ...

3. - 6. Reserved.

O. - Q.1. ...

R. - S. Reserved.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:876 (May 2008), amended LR 34:877 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1895 (September 2009), LR 36:1552 (July 2010), LR 36:2561 (November 2010), LR 37:2161 (July 2011), LR 39:3095 (November 2013).

**§954. Outlier Payments**

A. - B. ...

C. To qualify as a payable outlier claim, a deadline of not later than six months subsequent to the date that the final claim is paid shall be established for receipt of the written request for outlier payments.

1. Effective March 1, 2011, in addition to the 6 month timely filing deadline, outlier claims for dates of service on or before February 28, 2011 must be received by the department on or before May 31, 2011 in order to qualify for payment. Claims for this time period received by the department after May 31, 2011 shall not qualify for payment.

D. Effective for dates of service on or after March 1, 2011, a catastrophic outlier pool shall be established with annual payments limited to \$10,000,000. In order to qualify for payments from this pool, the following conditions must be met:

1. the claims must be for cases for:

a. children less than six years of age who received inpatient services in a disproportionate share hospital setting; or

b. infants less than one year of age who receive inpatient services in any acute care hospital setting; and

2. the costs of the case must exceed \$150,000.

a. The hospital specific cost to charge ratio utilized to calculate the claim costs shall be calculated using the Medicaid NICU or PICU costs and charge data from the most current cost report.

E. The initial outlier pool will cover eligible claims with admission dates from the period beginning March 1, 2011-June 30, 2011.

1. Payment for the initial partial year pool will be \$3,333,333 and shall be the costs of each hospital's qualifying claims net of claim payments divided by the sum of all qualifying claims costs in excess of payments, multiplied by \$3,333,333.

2. Cases with admission dates on or before February 28, 2011 that continue beyond the March 1, 2011 effective date, and that exceed the \$150,000 cost threshold, shall be eligible for payment in the initial catastrophic outlier pool.

3. Only the costs of the cases applicable to dates of service on or after March 1, 2011 shall be allowable for determination of payment from the pool.

F. Beginning with SFY 2012, the outlier pool will cover eligible claims with admission dates during the state fiscal year (July 1-June 30) and shall not exceed \$10,000,000 annually. Payment shall be the costs of each hospital's eligible claims less the prospective payment, divided by the sum of all eligible claims costs in excess of payments, multiplied by \$10,000,000.

G. The claim must be submitted no later than six months subsequent to the date that the final claim is paid and no later than September 15 of each year.

H. Qualifying cases for which payments are not finalized by September 1 shall be eligible for inclusion for payment in the subsequent state fiscal year outlier pool.

I. Outliers are not payable for:

1. transplant procedures; or
2. services provided to patients with Medicaid coverage that is secondary to other payer sources.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:519 (March 2010), amended LR 39:3096 (November 2013).

### §967. Children's Specialty Hospitals

A. - H. ...

I. Children's specialty hospitals are not eligible for the per diem adjustments established in §953.H.3 and §953.I.3.

J. - K. Reserved.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2562 (November 2010), amended LR 37:2162, 2162 (July 2011), LR 38:2773 (November 2012), LR 39:3097 (November 2013).

Kathy H. Kliebert  
Secretary

1311#088

### RULE

#### Department of Health and Hospitals Bureau of Health Services Financing

Nursing Facilities  
Reimbursement Rate Reductions  
(Post-Rebase) (LAC 50:II.20005)

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 50:II.20005 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

#### Title 50

#### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part II. Medical Assistance Program

#### Subpart 5. Reimbursement

#### Chapter 200. Reimbursement Methodology

#### §20005. Rate Determination

[Formerly LAC 50:VII.1305]

A. - I. ...

J. Reserved.

K. Effective for dates of service on or after July 1, 2012, the average daily rates for non-state nursing facilities shall be reduced by \$1.15 per day of the average daily rate on file as of June 30, 2012 after the sunset of the state fiscal year 2012 rebase and after the state fiscal year 2013 rebase.

L. Effective for dates of service on or after July 20, 2012, the average daily rates for non-state nursing facilities shall be reduced by 1.15 percent per day of the average daily rate on file as of July 19, 2012 after the sunset of the state fiscal year 2012 rebase and after the state fiscal year 2013 rebase.

M. Reserved.

N. Effective for dates of service on or after September 1, 2012, the average daily rates for non-state nursing facilities shall be reduced by \$1.91 per day of the average daily rate on file as of August 31, 2012 after the state fiscal year 2013 rebase which will occur on September 1, 2012.

O. ...

P. Reserved.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1791 (August 2002), amended LR 31:1596 (July 2005), LR 32:2263 (December 2006), LR 33:2203 (October 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:325 (February 2010), repromulgated LR 36:520 (March 2010), amended LR 36:1556 (July 2010), LR 36:1782 (August 2010), LR 36:2566 (November 2010), LR 37:902 (March 2011), LR 37:1174 (April 2011), LR 37:2631 (September 2011), LR 38:1241 (May 2012), LR 39:1286 (May 2013), LR 39:3097 (November 2013).

Kathy H. Kliebert  
Secretary

1311#090

### RULE

#### Department of Health and Hospitals Bureau of Health Services Financing

Nursing Facilities  
Reimbursement Rate Reductions  
(Pre-Rebase) (LAC 50:II.20005)

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 50:II.20005 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

#### Title 50

#### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part II. Medical Assistance Program

#### Subpart 5. Reimbursement

#### Chapter 200. Reimbursement Methodology

#### §20005. Rate Determination

[Formerly LAC 50:VII.1305]

A. - I. ...

J. Effective for dates of service on or after July 1, 2012, the average daily rates for non-state nursing facilities shall be reduced by \$4.11 per day of the average daily rate on file

as of June 30, 2012 after the sunset of the state fiscal year 2012 rebase and before the state fiscal year 2013 rebase.

K. - L. Reserved.

M. Effective for dates of service on or after September 1, 2012, the average daily rates for non-state nursing facilities shall be reduced by \$13.69 per day of the average daily rate on file as of August 31, 2012 before the state fiscal year 2013 rebase which will occur on September 1, 2012.

N. Reserved.

O. ...

P. Reserved.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1791 (August 2002), amended LR 31:1596 (July 2005), LR 32:2263 (December 2006), LR 33:2203 (October 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:325 (February 2010), repromulgated LR 36:520 (March 2010), amended LR 36:1556 (July 2010), LR 36:1782 (August 2010), LR 36:2566 (November 2010), LR 37:902 (March 2011), LR 37:1174 (April 2011), LR 37:2631 (September 2011), LR 38:1241 (May 2012), LR 39:1286 (May 2013), LR 39:3097 (November 2013).

Kathy H. Kliebert  
Secretary

1311#089

## RULE

### Department of Health and Hospitals Bureau of Health Services Financing

#### Nursing Homes—Licensing Standards Sanction Provisions (LAC 48:I.Chapter 97)

The Department of Health and Hospitals, Bureau of Health Services Financing has repealed LAC 48:I.9731 and §§9735-9749 in the Medical Assistance Program as authorized by R.S. 36:254. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

#### Title 48

### PUBLIC HEALTH—GENERAL

#### Part I. General Administration

#### Subpart 3. Licensing and Certification

#### Chapter 97. Nursing Facilities

#### Subchapter B. Organization and General Services

#### §9731. Complaint Process

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 24:49 (January 1998), amended LR 34:2403 (November 2008), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3098 (November 2013).

#### Subchapter C. Resident Rights

#### §9735. Authority and Scope

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 24:52 (January 1998), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3098 (November 2013).

#### §9737. Considerations

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 24:52 (January 1998), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3098 (November 2013).

#### §9739. Repeat Violations

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 24:53 (January 1998), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3098 (November 2013).

#### §9741. Notice and Appeal Procedure

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 24:53 (January 1998), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3098 (November 2013).

#### §9743. Civil Money Penalties (Fines)

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 24:54 (January 1998), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3098 (November 2013).

#### §9745. Classes of Violations Defined

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 24:54 (January 1998), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3098 (November 2013).

#### §9747. Collection of Civil Fines Assessed

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 24:54 (January 1998), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3098 (November 2013).

#### §9749. Revocation of License

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 24:54 (January 1998), repealed by the

Kathy H. Kliebert  
Secretary

1311#091

**RULE**

**Department of Natural Resources  
Office of Conservation**

**Fees (LAC 43:XIX.701, 703, 705, and 707)**

Pursuant to power delegated under the laws of the state of Louisiana, and particularly Title 30 of the Louisiana Revised Statutes of 1950, as amended, the Office of Conservation amends LAC 43:XIX.701, 703, and 707 (Statewide Order No. 29-R) in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq. The action will adopt Statewide Order No. 29-R-13/14 (LAC 43:XIX, Subpart 2, Chapter 7), which establishes the annual Office of Conservation fee schedule for the collection of application, production, and regulatory fees, and will replace the existing Statewide Order No. 29-R-12/13.

**Title 43**

**NATURAL RESOURCES**

**Part XIX. Office of Conservation—General Operations**

**Subpart 2. Statewide Order No. 29-R**

**Chapter 7. Fees**

**§701. Definitions**

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*BOE*—annual barrels oil equivalent. Gas production is converted to *BOE* by dividing annual mcf by a factor of 26.0.

*Capable Gas*—natural and casing head gas not classified as incapable gas well gas or incapable oil well gas by the Department of Revenue, as of December 31, 2012.

*Capable Oil*—crude oil and condensate not classified as incapable oil or stripper oil by the Department of Revenue, as of December 31, 2012.

\*\*\*

*Production Well*—any well which has been permitted by and is subject to the jurisdiction of the Office of Conservation, excluding wells in the permitted and drilling in progress status, class II injection wells, liquid storage cavity wells, commercial salt water disposal wells, class V injection wells, wells which have been plugged and abandoned, wells which have reverted to landowner for use as a fresh water well (Statewide Order No. 29-B, LAC 43:XIX.137.G, or successor regulations), multiply completed wells reverted to a single completion, and stripper oil wells or incapable oil wells or incapable gas wells certified by the Severance Tax Section of the Department of Revenue, as of December 31, 2012.

*Regulatory Fee*—an amount payable annually to the Office of Conservation, in a form and schedule prescribed by the Office of Conservation, on class II wells, class III wells, storage wells, type A facilities, and type B facilities in an amount not to exceed \$875,000 for fiscal year 2000-2001

and thereafter. No fee shall be imposed on a class II well of an operator who is also an operator of a stripper crude oil well or incapable gas well certified pursuant to R.S. 47.633 by the Severance Tax Section of the Department of Revenue as of December 31, 2012, and located in the same field as such class II well. Operators of record, excluding operators of wells and including, but not limited to, operators of gasoline/cycling plants, refineries, oil/gas transporters, and/or certain other activities subject to the jurisdiction of the Office of Conservation are required to pay an annual registration fee of \$105. Such payment is due within the time frame prescribed by the Office of Conservation.

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**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:21 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, LR 14:542 (August 1988), amended LR 15:551 (July 1989), LR 21:1249 (November 1995), LR 24:458 (March 1998), LR 24:2127 (November 1998), LR 25:1873 (October 1999), LR 26:2302 (October 2000), LR 27:1919 (November 2001), LR 28:2366 (November 2002), LR 29:2499 (November 2003), LR 31:2950 (November 2005), LR 32:2087 (November 2006), LR 33:2461 (November 2007), LR 34:2404 (November 2008), LR 35:2463 (November 2009), LR 36:2567 (November 2010), LR 37:3271 (November 2011), LR 38:2930 (November 2012), LR 39:3099 (November 2013).

**§703. Fee Schedule for Fiscal Year 2013-2014**

**A. ...**

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**B. Regulatory Fees**

1. Operators of each permitted type A facility are required to pay an annual regulatory fee of \$6,360 per facility.

2. Operators of each permitted type B facility are required to pay an annual regulatory fee of \$3,180 per facility.

3. Operators of record of permitted non-commercial class II injection/disposal wells are required to pay \$641 per well.

4. Operators of record of permitted class III and storage wells are required to pay \$641 per well.

**C. Class I Well Fees.** Operators of permitted class I wells are required to pay \$10,810 per well.

**D. Production Fees.** Operators of record of capable oil wells and capable gas wells are required to pay according to the following annual production fee tiers.

Tier	Annual Production (Barrel Oil Equivalent)	Fee (\$ per Well)
Tier 1	0	15
Tier 2	1-5,000	79
Tier 3	5,001-15,000	225
Tier 4	15,001-30,000	373
Tier 5	30,001-60,000	568
Tier 6	60,001-110,000	816
Tier 7	110,001-9,999,999	1,013

**E. - F.2. ...**

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:21 et seq., R.S. 30:560 and 706.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, LR 14:543 (August

1988), amended LR 15:552 (July 1989), LR 21:1250 (November 1995), LR 24:458 (March 1998), LR 24:2128 (November 1998), LR 25:1874 (October 1999), LR 26:2304 (October 2000), LR 27:1920 (November 2001), LR 28:2368 (November 2002), LR 29:350 (March 2003), LR 29:2501 (November 2003), LR 30:2494 (November 2004), LR 31:2950 (November 2005), LR 32:2088 (November 2006), LR 33:2461 (November 2007), LR 34:2405 (November 2008), LR 35:2463 (November 2009), LR 36:2569 (November 2010), LR 37:3273 (November 2011), LR 38:2931 (November 2012), LR 39:3099 (November 2013).

**§705. Failure to Comply**

A. Operators of operations and activities defined in §701 are required to timely comply with this order. Failure to comply by the due date of any required fee payment will subject the operator to civil penalties provided in title 30 of the Louisiana Revised Statutes of 1950, including but not limited to R.S. 30:18.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:21 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 14:544 (August 1988), amended LR 15:552 (July 1989), LR 21:1251 (November 1995), LR 24:459 (March 1998), LR 24:2128 (November 1998), LR 25:1874 (October 1999), LR 26:2304 (October 2000), LR 27:1921 (November 2001), LR 28:2368 (November 2002), LR 29:2501 (November 2003), LR 34:2406 (November 2008), LR 36:2569 (November 2010), LR 37:3274 (November 2011), LR 38:2931 (November 2012), LR 39:3100 (November 2013).

**§707. Severability and Effective Date**

A. The fees set forth in §703 are hereby adopted as individual and independent rules comprising this body of rules designated as Statewide Order No. 29-R-13/14 and if any such individual fee is held to be unacceptable, pursuant to R.S. 49:968(H)(2), or held to be invalid by a court of law, then such unacceptability or invalidity shall not affect the other provisions of this order which can be given effect without the unacceptable or invalid provisions, and to that end the provisions of this order are severable.

B. This order (Statewide Order No. 29-R-13/14) supersedes Statewide Order No. 29-R-12/13 and any amendments thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:21 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 14:544 (August 1988), amended LR 15:552 (July 1989), LR 21:1251 (November 1995), LR 24:459 (March 1998), LR 24:2128 (November 1998), LR 25:1874 (October 1999), LR 26:2305 (October 2000), LR 27:1921 (November 2001), LR 28:2368 (November 2002), LR 29:2502 (November 2003), LR 30:2494 (November 2004), LR 31:2950 (November 2005), LR 32:2088 (November 2006), LR 33:2462 (November 2007), LR 34:2406 (November 2008), LR 35:2464 (November 2009), LR 36:2570 (November 2010), LR 37:3274 (November 2011), LR 38:2931 (November 2012), LR 39:3100 (November 2013).

James H. Welsh  
Commissioner

1311#020

**RULE**

**Department of Transportation and Development  
Office of Engineering**

**Automatic License Plate Camera Devices (LAC 70:II.527)**

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and through the authority granted in R.S. 48:381 and R.S. 48:26, that the Department of Transportation and Development, Office of Engineering, hereby amends Chapter 5 to provide for permits to law enforcement agencies for the installation of automatic license plate camera devices on department rights-of-way.

**Title 70**

**TRANSPORTATION**

**Part II. Utilities**

**Chapter 5. Standards Manual for Accommodating  
Facilities on Highway Right-of-Way**

**§527. Miscellaneous**

A.1. - A.11.d. ...

e. Automatic License Plate Camera Devices. This type of permit is normally issued to Louisiana law enforcement agencies. For purposes of this rule, law enforcement agencies eligible for this permit may include the Louisiana State Police, sheriffs' departments of the parishes of this state and municipal police departments. These permits must be reviewed and approved by the district administrator or his designee. If the automatic license plate camera device will be placed upon a bridge or sign truss, approval must also be obtained from the department headquarters utility and permit engineer. Permit applicants must comply with all permit requirements.

12. - 15. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 19:14, 30:210, 30:211-217, 32:236, 38:2223, 38:3074, 48:26, 48:191-193, 48:217, 48:295.1-4, 48:343-344, 48:381-383, 48:385-387, and 51:1901-1909.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Utility and Permit Section, LR 20:317 (March 1994), amended by the Department of Transportation and Development, Office of Engineering, LR 39:3100 (November 2013).

Sherri H. LeBas  
Secretary

1311#021

**RULE**

**Department of Wildlife and Fisheries  
Wildlife and Fisheries Commission**

**Yo-Yos and Trotlines (LAC 76:VII.134)**

The Louisiana Wildlife and Fisheries Commission hereby adopts regulations for yo-yos and trotlines in Black Lake, Clear Lake and Prairie Lake (Natchitoches Parish), Caddo Lake (Caddo Parish), Chicot Lake (Evangeline Parish), D'Arbonne Lake (Union Parish), and Lake St. Joseph (Tensas Parish), Louisiana.

**Title 76**

**WILDLIFE AND FISHERIES**

**Part VII. Fish and Other Aquatic Life**

**Chapter 1. Freshwater Sport and Commercial Fishing**

**§134. Black Lake, Clear Lake, Prairie Lake, Caddo Lake, Chicot Lake, D'Arbonne Lake, and Lake St. Joseph**

A. The following regulations are applicable to the use of yo-yo and trigger devices when used in Black Lake, Clear Lake and Prairie Lake (Natchitoches Parish), Caddo Lake (Caddo Parish), Chicot Lake (Evangeline Parish), D'Arbonne Lake (Union Parish), and Lake St. Joseph (Tensas Parish), Louisiana.

1. No more than 50 yo-yos or trigger devices shall be allowed per person.

2. Except for those devices that are attached to a privately owned pier, boathouse, seawall, or dock, each yo-yo or trigger device shall be clearly tagged with the name, address, and telephone number of the owner or user.

3. When in use, each yo-yo or trigger device shall be checked at least once every 24 hours, and all fish and any other animal caught or hooked, shall be immediately removed from the device.

4. Except for those devices that are attached to a privately owned pier, boathouse, seawall, or dock, each yo-yo or trigger device must be re-baited at least once every 24 hours.

5. Except for those metal objects located above the water that are affixed to a private pier, dock, houseboat, or other manmade structure which is designed for fishing, no yo-yo or trigger device shall be attached to any metal object.

6. Except for an object used strictly in the construction of a pier, boathouse, seawall, or dock, no object which is driven into the lake bottom, a stump, tree, or the shoreline shall be used to anchor a yo-yo or trigger device.

*Object*—rebar or other metal material, cane, PVC tubing, construction material, or any other type of material.

7. Except for those devices that are attached to a privately owned pier, boathouse, seawall, or dock, when not being used in accordance with the provisions of this Section, each yo-yo or trigger device shall be removed from the waterbody immediately.

B. The following regulations are applicable to the use of trotlines when used in Black Lake, Clear Lake and Prairie Lake (Natchitoches Parish), Caddo Lake (Caddo Parish), Chicot Lake (Evangeline Parish), D'Arbonne Lake (Union Parish), and Lake St. Joseph (Tensas Parish), Louisiana.

1. All trotlines shall be clearly tagged with the name, address, and phone number of the owner or user and the date of placement. The trotline shall be marked on each end with a floating object that is readily visible.

2. At any given time, no person shall set more than three trotlines with a maximum of 50 hooks each.

3. All trotlines shall have an eight-foot cotton leader on each end of the trotline.

4. Except for those metal objects located above the water that are affixed to a private pier, dock, houseboat, or other manmade structure which is designed for fishing, no trotline shall be attached to any metallic object.

5. Each trotline shall be attended daily when in service.

6. When not in use, each trotline shall be removed from the waterbody by the owner or user.

C. A violation of any of the provisions of this Section shall be a class one violation, except there shall be no imprisonment. In addition, any device found in violation of this Paragraph shall be immediately seized by and forfeited to the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:326.3 and 56:6(32).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 39:3101 (November 2013).

Ronald Graham  
Chairman

1311#050

**RULE**

**Workforce Commission  
Office of Unemployment Insurance**

**Appealed Claims for Board of Review  
(LAC 40:IV.109 and 113)**

Editor's Note: The following Rule is being repromulgated to correct an error upon submission. The original Rule can be viewed in its entirety in the August 20, 2013 edition of the *Louisiana Register* on pages 2312-2313.

Pursuant to the authority granted in R.S. 23:1653, R.S. 23:1654, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Louisiana Workforce Commission amended §§109 and 113. The purpose of the amendment to §109 is to remove obsolete nomenclature from the body of the Section and to explain the effects of Saturdays, Sundays, and legal holidays on the computation of time delays associated with R.S. 23:1629 and R.S. 23:1630. Stylistic revisions to §113 to improve readability. Revisions to §113 are also extended the 15-minute grace period afforded to in-person hearing appellants to telephone hearing appellants.

**Title 40**

**LABOR AND EMPLOYMENT**

**Part IV. Employment Security**

**Subpart 1. Board of Review**

**Chapter 1. Employment and Security Law**

**§109. Appeals to the Appeals Tribunal and Board of Review**

A. The party appealing from the agency's initial determination shall file a written appeal, setting forth information required therein within 15 days after date notification was given or was mailed to his last known address.

B. It is hereby further provided that any communication written by claimant or employer to the Louisiana Workforce Commission or the board disputing the determination or appeal decision may be accepted as an appeal, provided said written communication is received by any office of the Louisiana Workforce Commission or by the board within 15 days after notification, was given or was mailed to his last known address.

C. Legal holidays and days on which the Louisiana Workforce Commission is closed shall not serve to extend the delay periods specified in R.S. 23:1629 and R.S. 23:1630.

D. Proof of the timeliness of mailing a request for appeal shall be shown only by the date indicated on the electronic transmission, by a legible official United States postmark, or by official receipt or certificate from the United States Postal Service made at the time of mailing which indicates the date thereof. In the event that the date of the electronic transmission or postmark is absent, illegible, or manifestly incorrect, the date that the request is received in the Appeals Tribunal or Board of Review office shall determine whether the appeal was timely filed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1471-1713.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Employment Security, LR 15:485 (June 1989), amended by the Department of Employment and Training, Board of Review, LR 17:36 (January 1991), amended by the Workforce Commission, Office of Unemployment Insurance LR 39:2312 (August 2013), repromulgated by the Workforce Commission, Unemployment Insurance Administration, LR 39:3101 (November 2013).

### **§113. Postponements, Continuances, Reopenings, and Rehearings**

#### **A. Continuances or Postponements**

1. A scheduled hearing may be postponed or continued by the administrative law judge for good cause, either upon his own motion or upon a showing of good cause by written request of a party, submitted to the administrative law judge whose name and address appear on the notice of hearing. Written notice of the time and place of a postponed or continued hearing shall be given to the parties or their named representatives.

2. The administrative law judge shall provide written denial to any party whose written request for postponement or continuance is received after his decision has been mailed. The requesting party shall also be provided written notice of his right either to file written request of a reopening of hearing before the administrative law judge within seven days from the date of mailing of the decision on the claim or to file further appeal to the Board of Review under §109 and §125. The untimely request for postponement or continuance shall not itself be treated as an appeal of the decision to the Board of Review. An appeal may also be timely filed by a party before the Board of Review under §109 and §125 after a written response to the request for reopening is issued by the administrative law judge.

3. Any such request of a party and response of the administrative law judge shall be incorporated in the case file.

B. Non-Appearance of Appellant. If the appellant, who is the party who files the appeal before the Appeals Tribunal, fails to appear or fails to be available to participate in a telephone hearing within 15 minutes after the scheduled hearing time, the administrative law judge shall order the appellant in default and issue a dismissal of appeal. In such event, the agency determination shall become the final decision. Written notice of default of the appellant and dismissal of the appeal shall be mailed to the parties. The appellant either may file a written request for reopening before the administrative law judge, with a showing of good

cause, within seven days of the date of mailing of the dismissal decision or may file an appeal before the board of review under §109 and §125. If such appellant is denied a reopening by the administrative law judge, any such request shall be forwarded to the board of review as an appeal as of the date of the written request for reopening. If it is determined by the administrative law judge on reopening or by the board of review on appeal that the appellant has shown good cause for his nonappearance, the dismissal shall be vacated and a new hearing on the merits shall be scheduled.

C. Non-Appearance or Late Appearance of Appellee. If the appellee, who is the party whose agency determination is being appealed by another party before the appeals tribunal, fails to appear at the scheduled hearing time of an in-person hearing, or fails to be available to receive the telephone call to participate in a scheduled telephone hearing at the scheduled hearing time, the administrative law judge shall proceed to conduct the hearing and issue a decision on the merits based upon the administrative record and any evidence and testimony presented by the appellant. The appellee may either file a written request for reopening before the administrative law judge, with a showing of good cause, within seven days of the date of mailing of the decision or may file an appeal before the board of review under §109 and §125. If such appellee is denied a reopening by the administrative law judge, any such request shall be forwarded to the board of review as an appeal as of the date of the written request for reopening. If it is determined by the administrative law judge on reopening or by the board of review on appeal that the appellee has shown good cause for his non-appearance, the decision shall be vacated, and a new hearing on the merits shall be scheduled.

#### **D. Good Cause for Reopening or Rehearing**

1. The administrative law judge or the board of review shall make a determination of good cause for failure to appear only if the written request for reopening or the appeal filed by the party contains a statement of the reason(s) for his failure to act in a timely manner and reasonably justifies a finding of good cause to excuse such failure.

2. To determine whether good cause has been shown in a request for reopening or in an appeal to excuse the failure of a party to appear, the administrative law judge and the board of review shall consider any relevant factors, including, but not limited to:

- a. reasonably prudent behavior;
- b. untimely receipt of notice;
- c. administrative error;
- d. reasons beyond control or avoidance;
- e. reasons unforeseen;
- f. timely effort to request continuance;
- g. physical disabilities;
- h. degree of untimeliness; or
- i. prejudice to parties.

3. Failure to provide timely notice of change or correction of address shall not establish good cause for failure to appear, unless the party satisfactorily demonstrates his reasonable belief in his request or appeal that such notice was not needed or had been provided.

4. The basis of any determination by the administrative law judge or the board of review relating to good cause must be provided in the written response or

decision. The fulfillment of each of the above factors is not required in any such response or decision for the establishment of good cause for failure to appear.

5. A written request for reopening before the administrative law judge may be filed within seven days of the date of mailing of his decision or an appeal to the board of review may be filed under §109 and §125 by any party for admission of additional evidence upon the showing of good cause that any such evidence is newly discovered or was unavailable or unknown at the time of the hearing.

E. Terminology. The term party or parties, as used in these rules, shall mean the claimant and the employer or any legal or designated representative thereof, including the administrator in those appeals in which he is specified as a party under R.S. 23:1629.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1471-1713.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Employment Security, LR 15:486 (June 1989), amended by the Department of Employment and Training, Office of Employment Security, LR 17:36 (January 1991), repromulgated by the Department of Labor, Office of Employment Security, Board of Review LR 23:76 (January 1997), amended by the Workforce Commission, Office of Unemployment Insurance, LR 39:2312 (August 2013), repromulgated by the Workforce Commission, Unemployment Insurance Administration, LR 39:3102 (November 2013).

Curt Eysink  
Executive Director

1311#022

# Notices of Intent

## NOTICE OF INTENT

### Department of Agriculture and Forestry Horticulture Commission

#### Landscape Architects Exam (LAC 7:XXIX.Chapter 1)

Under the enabling authority of R.S. 3:3801 and in accordance with the Administrative Procedure Act (R.S. 49:950 et seq.), the Department of Agriculture and Forestry intends on amending the rules and regulations (proposed action) set out below.

The proposed action is intended to bring LDAF regulations into conformity with the changes in the Revised Statutes made by Act 103 of 2013 regarding the landscape architects examination. The proposed action simplifies the requirements for a person to apply for and take the Louisiana Landscape Architects Examination. The other changes made by the proposed action are not substantive; rather they are a rewording of existing regulations designed to make the regulations easier to read and understand.

#### Title 7

#### AGRICULTURE AND ANIMALS

#### Part XXIX. Horticulture Commission

#### Chapter 1. Horticulture

#### §102. Definitions

A. The terms defined in R.S. 3:3803 are applicable to this Part and have the meaning given to them in that statute, except where a regulation or the context expressly indicates otherwise.

B. The terms defined in this Section are applicable to this Part and have the meaning herein given to them, except where a regulation or the context expressly indicates otherwise.

C. The following terms are hereby defined for purposes of this Part.

*Arborist*—any person trained in the care and removal of shade and ornamental trees. Shade and ornamental trees may be defined as those on an existing homesite or commercial property and those on property permitted for development for commercial or residential purposes. This definition shall also apply to any tree within 100 feet of any improvements on these properties.

*CLARB*—the Council of Landscape Architectural Registration Boards or any successor.

*Department*—the Louisiana Department of Agriculture and Forestry.

*Floral Design*—an arrangement of cut flowers, ornamental plants, other living or freshly cut plant materials, or any combination thereof intentionally constructed so as to constitute a planned relationship among them.

*Horticulture Law*—Louisiana Revised Statutes of 1950, Title 3, Chapter 24, §3801 et seq.

*Landscape Architect*—any person that applies creative and technical skills and scientific, cultural and political knowledge in the planned arrangement of natural and constructed elements on the land with a concern for the

stewardship and conservation of natural, constructed and human resources.<sup>1</sup>

*LARE*—the Landscape Architect Registration Examination.

*Stop Order and Notice of Non-Compliance*—a directive issued by the commissioner or the department or authorized agent to a person prohibiting that person from continuing a particular course of conduct or prohibiting the advertisement, application, distribution, disturbance, movement, performance, sale or offer for sale of a service or material thing, or both.

<sup>1</sup>American Society of Landscape Architects (ASLA) Definition of Landscape Architecture, ASLA Member Handbook, adopted November 18, 1983.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3801.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Horticulture Commission, LR 26:627 (April 2000), amended LR 33:1854 (September 2007), LR 34:2547 (December 2008), LR 40:

#### §105. Qualifications for Examination and Licensure or Permitting

A. All persons applying for an examination for licensure or for a license or permit issued by the commission shall meet the following requirements.

1. An applicant must be 17 years of age or older to take an examination for licensure or apply for a permit, but must be 18 years of age or older before a license or permit will be issued to the applicant.

2. An applicant for licensure shall successfully complete the examination prescribed by the commission for the area in the practice of horticulture for which the license is sought.

B. Applicants for the landscape architect license shall also meet the following requirements:

1. pass the LARE or an exam approved by CLARB;

2. submit proof of passage of LARE or an exam approved by CLARB with the application for the Louisiana Landscape Architect Examination;

3. pass the Louisiana Landscape Architect Examination;

4. have at least one year of practical experience under the direct supervision of a licensed landscape architect, landscape horticulturist, engineer, architect, or a licensed professional with a design or contracting firm.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3801, R.S. 3:3807, and R.S. 3:3808.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Horticulture Commission, LR 8:184 (April 1982), amended by the Department of Agriculture and Forestry, Horticulture Commission, LR 14:7 (January 1988), LR 20:639 (June 1994), LR 26:2240 (October 2000), LR 35:1227 (July 2009), LR 40:

#### §107. Application for Examination and Licensure or Permitting

A. Each applicant must complete the application form prescribed by the commission for the area in the practice of horticulture for which the license or permit is sought and submit the application to the commission at 5825 Florida

Boulevard, Baton Rouge, LA 70806 by the deadline date established for applying for the taking of the examination along with any other information required by the commission in this Chapter for an applicant to take the requested examination.

B. Applicants who desire to take an examination for licensure offered by the commission may apply at any time, in person or by writing, to the commission's state office at 5825 Florida Boulevard, Baton Rouge, LA 70806 or at any district office of the department. Applicants who apply in person, will be allowed, whenever feasible, to complete the written application form at the initial visit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3801, R.S. 3:3807, and R.S. 3:3808.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Horticulture Commission, LR 8:184 (April 1982), amended by the Department of Agriculture and Forestry, Horticulture Commission, LR 14:7 (January 1988), LR 18:249 (March 1992), LR 20:639 (June 1994), LR 23:854 (July 1997), LR 29:1460 (August 2003), LR 31:1053 (May 2005), LR 35:1227, 1228 (July 2009), LR 37:3464 (December 2011), LR 40:

### **§109. Examination Fees**

#### **A. Landscape Architect**

1. The initial fee for the Louisiana Landscape Architect Examination shall be \$200.

2. The re-examination fee for the Louisiana Landscape Architect Examination shall be \$100.

#### **B. - C. ...**

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3806, R.S. 3:3805, and R.S. 3:3801.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Horticulture Commission, LR 8:184 (April 1982), amended by the Department of Agriculture and Forestry, Horticulture Commission, LR 14:8 (January 1988), LR 18:249 (March 1992), LR 20:640 (June 1994), LR 29:2297 (November 2003), LR 31:1053 (May 2005), LR 35:1227 (July 2009), LR 37:3464 (December 2011), LR 40:

### **§111. Minimum Examination Performance Levels Required**

A. Any person taking an examination for licensure must score a 70 percent or above to pass the examination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3801 and R.S. 3:3807.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Horticulture Commission, LR 8:184 (April 1982), amended by the Department of Agriculture and Forestry, Horticulture Commission, LR 20:153 (February 1994), LR 35:1229 (July 2009), LR 37:3464 (December 2011), LR 40:

### **§113. Examination; Location; Scheduling; Re-Examination**

A. Examinations for licensure shall be administered in the commission's state office at 5825 Florida Boulevard, Baton Rouge, LA 70806 and, upon written request, in district offices of the department. Each applicant shall be notified of the date for the examination.

B. An applicant who fails to complete or pass an examination for licensure must wait at least two weeks before reapplying to take the examination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3807 and R.S. 3:3801.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Horticulture Commission, LR 8:185 (April 1982), amended by the Department of Agriculture and Forestry, Horticulture Commission, LR 14:8 (January 1988), LR 18:250

(March 1992), LR 20:640 (June 1994), LR 31:1053 (May 2005), LR 35:1227 (July 2009), LR 37:3465 (December 2011), LR 40:

### **Family Impact Statement**

It is anticipated that the proposed action will have no significant effect on the:

1. stability of the family;
2. authority and rights of parents regarding the education and supervision of their children;
3. functioning of the family;
4. family earnings and family budget;
5. behavior and personal responsibility of children; or
6. ability of the family or a local government to perform the function as contained in the proposed action.

### **Poverty Impact Statement**

It is anticipated that the proposed action will have no significant effect on:

1. household income, assets, and financial security;
2. early childhood or educational development;
3. employment and workforce development;
4. taxes and tax credits; or
5. child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

### **Small Business Statement**

It is anticipated that the proposed action will not have a significant adverse impact on small businesses as defined in the Regulatory Flexibility Act (R.S. 49:965.2-965.8). The agency, consistent with health, safety, environmental and economic factors has considered and, where possible, utilized regulatory methods in drafting the proposed action to accomplish the objectives of applicable statutes while minimizing any anticipated adverse impact on small businesses.

### **Public Comments**

Interested persons may submit written comments, data, opinions, and arguments regarding the proposed action. Written submissions are to be directed to Ansel Rankins, Department of Agriculture and Forestry, telephone (225) 922-1234, fax (225) 237-5553, mailing address, 5825 Florida Boulevard, Baton Rouge, LA 70806. Comments must be received no later than 4 p.m. on December 27, 2013. No preamble regarding the proposed action is available.

Mike Strain, DVM  
Commissioner

## **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

### **RULE TITLE: Landscape Architects Exam**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed action will have no impact on state or local governmental unit expenditures. The proposed action is intended to bring the Louisiana Department of Agriculture and Forestry (LDAF) regulations into conformity with the changes in the Revised Statutes made by Act 103 of 2013 Regular Legislative Session regarding the landscape architects examination. The proposed action simplifies the requirements for a person to apply for and take the Louisiana Landscape Architects Examination. The other changes made by the proposed action reword existing regulations in order to make them easier to read and understand.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed action is not anticipated to have a material effect on governmental revenues.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed action is not anticipated to have a material effect on affected persons or on non-government groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed action is not anticipated to have a material effect on competition or employment.

Dane Morgan  
Assistant Commissioner  
1311#046

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Economic Development  
Office of the Secretary  
Office of Business Development  
and  
Louisiana Economic Development Corporation**

Economic Development Award Program (EDAP),  
Economic Development Loan Program (EDLOP) and  
Economic Development Site Readiness Program (EDRED)  
(LAC 13:III.Chapter 1)

The Louisiana Department of Economic Development, Office of the Secretary, Office of Business Development, and Louisiana Economic Development Corporation, pursuant to the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and under the authority of R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341, hereby provide notice of their intent to amend, supplement and expand portions of the rules of the Economic Development Award Program (EDAP) and the Economic Development Loan Program (EDLOP), provided in LAC 13:III.Chapter 1.

The Department of Economic Development, Office of the Secretary, Office of Business Development, and Louisiana Economic Development Corporation, have found a need to amend, supplement, expand and re-adopt certain provisions of the rules for the regulation of the Economic Development Award Program (EDAP) and the Economic Development Loan Program (EDLOP). The amendments to these rules actually repeal and eliminate the rules of the Economic Development Loan Program (EDLOP) as they currently exist, and merge the repealed rules of that program into the revised rules of the Economic Development Award Program (EDAP), thereby amending, supplementing, expanding, updating and re-adopting with some new wording the definitions and provisions already in the rules of the existing Economic Development Award Program (EDAP). All of these amended rules will promote economic development in this state, will increase the state's competitiveness and enhance the state's ability to secure economic development projects, will encourage the investment of new capital to create new Louisiana businesses and expand existing Louisiana businesses, and will help to successfully secure the creation and/or retention of jobs by business entities newly locating in Louisiana or which may already exist in

Louisiana and are relocating and/or expanding their operations, but require state assistance for such development as an incentive to influence the company's decision to locate in Louisiana, maintain or expand its Louisiana operations, and/or increase its capital investment in Louisiana. Without the amendments to these rules the state may suffer the loss of business investment and economic development projects creating and/or retaining jobs that would improve the standard of living and enrich the quality of life for citizens of this state.

**Title 13**

**ECONOMIC DEVELOPMENT**

**Part III. Financial Assistance Programs**

**Chapter 1. Economic Development Award Program (EDAP), Economic Development Loan Program (EDLOP) and Economic Development Site Readiness Program (EDRED)**

**Subchapter A. Economic Development Award Program (EDAP)**

**§101. Economic Development Award Program (EDAP); Preamble and Purpose**

A. The Economic Development Award Program (EDAP) is vital to support, promote and enhance the state's commitment to Targeted Industry-Based Economic Development, and the state's long term goals as set forth in the Louisiana Department of Economic Development's Master Plan for Economic Development for the State of Louisiana.

B. The purpose of this EDAP program is to assist in the financing or funding of Sponsored Projects and/or Un-sponsored Projects, further described below, for which LED and LEDC assistance is requested in order to promote economic development in this state and provide an incentive to influence a company's decision to locate, relocate, maintain, rebuild and/or expand its business operations in Louisiana, and/or to increase its capital investment in Louisiana:

1. a sponsored project would include the financing or funding of an expansion, improvements and/or provision of publicly-owned infrastructure for a public entity for the benefit of industrial or business development projects that promote targeted industry economic development and that require state assistance for basic infrastructure development, with a public entity recommending the award, serving as a sponsor of and participating in the award application and the award agreement;

2. an un-sponsored project would include the financing or funding for locating, obtaining and/or improving privately-owned property and improvements, including the purchase or leasing of a building site, the purchase or construction, renovation, rebuilding and improvement of buildings, their surrounding property, for machinery and equipment purchases and rebuilding, the demolition or removal of existing buildings and/or improvements if a part of the site preparation for the construction of new buildings and/or improvements, and for additional costs related to and incurred in connection with the location or relocation of the business enterprise, including appropriate professional and/or real estate fees and commissions, but without the requirement of a public entity sponsor.

C. The Louisiana Department of Economic Development, with the approval of the Board of Directors of Louisiana Economic Development Corporation, may take necessary steps to successfully secure projects in highly competitive bidding circumstances.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341, et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:36 (January 1997); amended by the Department of Economic Development, Office of the Secretary, LR 23:1638 (December 1997), LR 25:237 (February 1999), LR 26:236 (February 2000); amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:860 (June 2003), LR 31:902 (April 2005), LR 35:871 (May 2009), amended by the Department of Economic Development, Office of the Secretary, Louisiana Economic Development Corporation, LR 40:

### **§103. Definitions**

*Applicants*—the company or business enterprise and (if a Sponsored Project) the public entity, collectively, requesting or seeking financial assistance from LED and LEDC under this program.

*Award*—the funding of financial assistance and/or appropriations, including performance-based grants or loans approved under this program for eligible applicants, which will promote economic development in this state, and will serve as an incentive to influence a company's decision to locate or relocate its business operations in Louisiana, maintain, rebuild and/or expand its Louisiana operations, and/or increase its capital investment in Louisiana.

*Award Agreement*—that agreement or contract hereinafter referred to between the company, LED and LEDC, and (if a sponsored project) the public entity, through which, by cooperative endeavor agreement or otherwise, the parties set forth the amount of the award, the terms, conditions and performance objectives or obligations of the award provided pursuant to the rules of this program.

*Awardee*—an applicant, company or business enterprise, and (if a sponsored project) the public entity receiving an award under this program.

*Borrower*—the awardee receiving and accepting a loan award under this program.

*Company*—the business enterprise, being a legal entity duly authorized to do and doing business in the State of Louisiana, in need of funding for a project pursuant to these rules, which is undertaking the project or for which the project is being undertaken, and which is seeking and/or receiving the benefit of the award under this program.

*Default*—the failure to perform a task, to fulfill an obligation, or to do what is required; the failure to create new jobs or the number of new jobs as agreed, or to employ, to retain, or to maintain the employment of the number of employees as agreed; the failure to achieve and/or to maintain the employee compensation or payroll levels as agreed; the failure to pay or to repay any loan or interest due thereon as agreed; or the failure to meet a financial obligation.

*EDAP*—the Economic Development Award Program.

*Employee*—a Louisiana resident hired by a company for permanent full-time employment.

*Financed Lease*—a lease entered into that satisfies the criteria of a lease intended as a security device in which a security interest may be reserved in favor of LED or LEDC,

for the payment or repayment of an award, a debt, a loan or some other obligation; in which case LED or LEDC, as the creditor or lender, shall be the lessor, the awardee, as the debtor or borrower, shall be the lessee, and the installment payments of the award, loan or other obligation shall be the lease or rental payments.

*Grant or Grant Award*—funding of financial assistance approved under this program for eligible applicants, provided the awardee achieves and maintains the performance obligations as required in the award agreement. This type of award is not ordinarily intended to be repaid in cash payments except in the event of a default by the awardee in the performance of its obligations under the award agreement. In the event of a default, the full repayment by the awardee of the award may be required, or repayment of the unpaid or uncredited balance may be required of the awardee after appropriate *performance credits*, have been applied against the repayment obligation.

*Guaranty*—an agreement, promise or undertaking by a second party to make the payment of a debt or loan or to perform an obligation in the event the party liable in the first instance fails to make payment or to perform an obligation.

*Infrastructure*—considered to be basic hard assets, permanent type assets, such as land, buildings, structures, substantial, installed or permanently attached machinery and/or equipment, streets, roads, highways, rights-of-way or servitudes, including paving or other hard surfacing, piping, drainage and/or sewage facilities, utility lines, poles and facilities, railroad spurs, tracks, cross ties, and all things similar or appurtenant thereto, and including costs related to the purchase, design, location, construction, and/or installation of such hard assets.

*Infrastructure Project*—refers to the undertaking for which an award is granted hereunder for the purchase, or new construction, improvement or expansion of land, roadways, servitudes, parking facilities, equipment, bridges, railroad spurs, utilities, water works, drainage, sewage, buildings, ports and waterways.

*LED*—the Louisiana Department of Economic Development.

*LEDC*—the Louisiana Economic Development Corporation.

*LEDC Board*—the Board of Directors of the Louisiana Economic Development Corporation.

*Loan or Loan Award*—funding of financial assistance approved under this program for eligible applicants, provided the awardee achieves and maintains the performance obligations as required in the award agreement, which award is to be repaid in cash payments over a period of time by the awardee/borrower. Such financial assistance loans may be repaid either with or without interest (at the discretion of the LEDC Board), and may also be repaid by applying against the unpaid or uncredited balance of the award appropriate *performance credits* earned by the awardee through the performance of its required obligations during the term of the award agreement; and in the event such "Credits" are utilized and earned, any interest due may also be waived, all to be determined in its discretion by the LEDC Board, or by the LED or LEDC staff.

*Loan Participation*—the sharing by one lender of a part or portion of a loan with another lender or other lenders, whereby the participant or participants may provide a

portion of the loan funds, or may purchase a portion of the loan, and which participant or participants would be entitled to share in the proceeds of the loan repayments and any interest income.

*Performance Credits*—may include any of the following or any combination of the following credits earned by the awardee through the performance of its required obligations during the term of the award agreement, as determined in its discretion by the LEDC Board, or by the LED or LEDC staff, and as provided in the award agreement:

1. *Jobs Credits*—refers to credits, in an amount determined as provided in the award agreement, earned for the number of new permanent full-time jobs created, filled with employees and maintained within the agreed employment and/or contract term, which credits are applied against an obligation to repay an award or the unpaid or uncredited balance of an award, as provided in the award agreement;

2. *Payroll Credits*—refers to credits, in an amount as provided in the award agreement, earned for dollar amounts of new job annual payroll, for increases to existing job annual payroll, or for total new annual payroll for all new and existing permanent full-time jobs, or any combinations thereof, paid by the company within the agreed employment and/or contract term, which credits are applied against an obligation to repay an award or the unpaid or uncredited balance of an award, as provided in the award agreement; and

3. *Jobs/Payroll Credits*—refers to a combination of “Jobs Credits” and “Payroll Credits” applied against an obligation to repay an award or the unpaid or uncredited balance of an award, as provided in the award agreement.

*Permanent Full-Time Jobs or Permanent Full-Time Equivalent Jobs*—refers to direct jobs which are not contract jobs, that are permanent and not temporary in nature, requiring employees to work an average of 30 or more hours per week.

*Program*—the Economic Development Award Program (EDAP), which may include sponsored projects or unsponsored projects that are undertaken by a company and a public entity (if a sponsored project), and funded wholly or partially by LED and LEDC through an award pursuant to these rules and the bylaws of LEDC.

*Project*—refers to the undertaking related to the location, relocation, maintaining, rebuilding or expansion of a business enterprise or an industrial facility in this state, for which an award is sought and/or is granted under this program which will promote economic development in this state, for which LED and LEDC assistance is requested under this program.

*Public Entity or Sponsoring Entity*—the public or quasi-public entity that is responsible for recommending to LED and LEDC the approval of the financial award for the project, for engaging in the award agreement with the company, and pursuant thereto is responsible with the company for the performance and oversight of the project and for supervising with LED the company’s compliance with the terms, conditions and performance objectives and obligations of the award agreement.

*Secretary*—the Secretary of the Department of Economic Development, who is also the President of LEDC, or his designee.

*Security Interest*—a lien, incumbrance or mortgage affecting movable or immovable property, or a Uniform Commercial Code (UCC-1) Financing Statement, given by an awardee, as debtor or borrower, in favor of LED and/or LEDC, as creditor or lender, to assure the awardee’s payment or repayment of all or the unpaid or uncredited balance of an award, loan, debt, or promise to pay an amount of money, or for the fulfillment or performance of an obligation or obligations. A security interest may also be reserved in favor of LED or LEDC, as the creditor or lender, in the form of a lease, commonly called a *financed lease*, as defined above.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:36 (January 1997); amended by the Department of Economic Development, Office of the Secretary, LR 23:1638 (December 1997), LR 25:237 (February 1999), LR 26:236 (February 2000); amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:861 (June 2003), LR 31:902 (April 2005), LR 35:871 (May 2009), amended by the Department of Economic Development, Office of the Secretary, Louisiana Economic Development Corporation, LR 40:

### **§105. General Principles**

A. The following general principles, including the eligibility requirements set forth in §107 and the criteria provided in §109 below, will direct the administration of the Economic Development Award Program (EDAP).

1. LEDC acting through LED may make an EDAP award, by grant or loan, on terms and conditions which are determined by the LEDC board in its discretion, considering the recommendations of the Secretary and/or the staff of LED or LEDC, or by the staff of LED or LEDC in the absence of a determination by the LEDC board, will be beneficial in meeting the goals and purposes stated in the preamble and purpose of these rules.

2. Awards are not to be construed as an entitlement for companies locating or located in Louisiana, and are subject to the discretion of the LEDC board, after considering the recommendations of the Secretary and/or the staff of LED or LEDC.

3. An award must reasonably be expected to be a significant factor in a company’s location, investment and/or expansion decisions.

4. Awards must reasonably be demonstrated to result in the improvement of or enhancement to the economic development and well-being of the state and local community or communities wherein the project is or is to be located.

5. The retention and strengthening of existing businesses will be evaluated using the same procedures and with the same priority as the recruitment of new businesses to the state.

6. The anticipated economic benefits to the state and to the local community or communities wherein the project is or is to be located will be considered in approving and making the award.

7. The favorable recommendation of the local governing authority wherein the project is or shall be located is expected and will be a factor in the consideration of the award.

8. Appropriate cost matching or funds matching by the applicants, private investors, the local community and/or local governing authority, as well as among project beneficiaries will be a factor in the consideration of an award.

9. Award funds shall be utilized for the approved project only.

10. In a sponsored project, during the term of the award agreement the sponsoring public entity shall maintain public ownership of the public property and infrastructure improvements acquired or paid for with state funds; and in an unsponsored project, during the term of the award agreement the awardee/company shall maintain ownership of the property and improvements acquired or paid for with state funds. These parties shall not transfer ownership of such property or improvements for less than the fair market value thereof. Should either of these parties elect to sell such property or improvements, or should any other party to the award agreement or any other third party elect to purchase such property or improvements for fair market value during the term of the award agreement, the proceeds derived from such purchase and received by the selling party shall be refunded to LED or LEDC by the selling party immediately on receipt of such proceeds, to be applied as a credit against the remaining unpaid or uncredited balance of the award.

11. In the discretion of the LEDC board, after considering the recommendations of the Secretary and/or the staff of LED or LEDC, a two-year moratorium from the date of an LEDC board approval or award of a grant or a loan may be required on additional EDAP awards for the benefit of the same company at the same location, and a company shall not be eligible for or receive another EDAP award so long as the same company is currently still obligated under an existing EDAP award involving the same location.

12. Whether or not an award will be made is entirely in the discretion of the LEDC board, after considering the recommendations of the secretary and/or the staff of LED or LEDC, and shall depend on the facts and circumstances of each case, the funds available, funds already allocated, and other such factors as the LEDC board may, in its discretion, deem to be pertinent.

13. The approval or rejection of any application for an award shall not establish any precedent and shall not bind the LEDC board, the LED secretary or the staff of LED or LEDC to any course of action with regard to any application or award.

14. A loan award may also take the form of a loan participation, wherein LED or LEDC may act as the originator of the loan, and may share or participate a portion of the loan with another lender or other lenders; or LED or LEDC may act as a participant in a loan, and accept a portion or a share of a loan originated by another lender or other lenders.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 23:36 (January 1997); amended by the Department of Economic Development, Office of the Secretary, LR 23:1638 (December 1997), LR 25:237 (February 1999), LR 26:237 (February 2000); amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:861 (June 2003), LR

31: 903 (April 2005), LR 35:872 (May 2009), amended by the Department of Economic Development, Office of the Secretary, Louisiana Economic Development Corporation, LR 40:

#### **§107. Eligibility**

A. An eligible application for the award must meet the general principles set forth in Section 105 above and the criteria provided in Section 109 below; must demonstrate a need for the funding of the project consistent with these rules; and,

1. In connection with a Sponsored Project, the infrastructure project must be or will be owned by, and the ownership benefits or rights resulting from the infrastructure project must inure to the benefit of one of the following:

- a. A public or quasi-public entity; or
- b. A political subdivision of the state; or

2. In connection with an Un-sponsored Project, the project must be or will be owned by, and the ownership benefits or rights resulting from the project must inure to the benefit of the applicant/ company, business enterprise or awardee, which in the case of a loan award, will also be the borrower.

B. A company or public entity shall be considered ineligible for this program if it has pending or outstanding claims or liabilities relative to failure or inability to pay its obligations, including state or federal taxes, a bankruptcy proceeding, or if it has pending, at the federal, state, or local level, any proceeding concerning denial or revocation of a necessary license or permit, or if the company or public entity has another contract with LED or LEDC in which the company or public entity is in default and/or is not in compliance. Should a company or a public entity, after receiving an award, fail to maintain its eligibility during the term of the award agreement, the LEDC Board, in its discretion, may terminate the agreement and the award, and may seek a refund of any or all funds previously disbursed under the agreement.

C.1. Businesses not eligible for awards under this program shall include:

- a. Retail businesses, enterprises and/or operations;
- b. Real Estate businesses, enterprises, operations and/or developments (whether commercial or residential);
- c. Lodging or Hospitality businesses, enterprises and/or operations;
- d. Assisted Living businesses, enterprises or operations, Retirement Communities, or Nursing Homes; or
- e. Gaming or Gambling businesses, enterprises and/or operations.

2. This ineligibility provision shall not apply to wholesale, storage warehouse or distribution centers; catalog sales or mail-order centers; home-office headquarters or administrative office buildings; even though such facilities are related to ineligible business enterprises, provided that retail sales, hospitality services, assisted living or nursing services, and gaming activities are not provided directly and personally to individuals in any such facilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 23:37 (January 1997); amended by the Department of Economic Development, Office of the Secretary, LR 23:1639 (December 1997), LR 25:238 (February 1999), LR 26:237 (February 2000); amended by the Department of Economic

Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:861 (June 2003), LR 31:903 (April 2005), LR 35:872 (May 2009), amended by the Department of Economic Development, Office of the Secretary, Louisiana Economic Development Corporation, LR 40:

**§109. Criteria for Projects**

A. In addition to the general principles set forth in §105 and the eligibility requirements provided in §107 above, projects must meet the criteria hereinafter set forth for an award under this program.

1. Job Creation and/or Retention and Capital Investment

a. Projects must create or retain at least 10 permanent full-time jobs in Louisiana, at the project location.

b. Consideration will be given for projects having a significant new private capital investment.

c. The number of jobs to be retained and/or created and the compensation or payroll amounts or levels to be achieved and maintained as stated in the application for the award or as up-dated and finalized in the award agreement, will be strictly adhered to, and will be made an integral part of the award agreement.

2. Preference will be given to projects for industries identified by LED or LEDC as targeted industries, and to projects located in areas of the state with high unemployment levels.

3. Preference will be given to projects intended to provide, expand, or improve basic infrastructure supporting mixed use by the company and the surrounding community, and secondary consideration will be given to projects involving machinery and equipment purchases or rebuilding.

4. Companies must be in full compliance with all state and federal laws.

5. No assistance may be provided for Louisiana companies relocating their operations to another labor market area (as defined by the US Census Bureau) within Louisiana, except when the company gives sufficient evidence that it is otherwise likely to relocate outside of Louisiana, or the company is significantly expanding and increasing its number of employees and its capital investment in this state.

6. The minimum award request size shall be \$50,000.

7. Extra consideration will be given for companies paying wages substantially above the prevailing regional wage.

8. If a company does not start the project or begin construction of the project, or make substantial progress toward preparation of architectural and engineering plans and specifications and/or permit applications, or execute purchase orders for machinery and equipment or orders for the rebuilding of machinery and equipment within six (6) months after its award approval by the LEDC Board, the LEDC Board of Directors, in its discretion, may extend the time period for the company's start of the project, reconsider and withdraw the award or funding for the project, and/or require reapplication. LED or LEDC may require copies of written, signed documentation demonstrating that the contemplated project has begun or has been started.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR

23:37 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1639 (December 1997), LR 25:238 (February 1999), LR 26:237 (February 2000); amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:862 (June 2003), LR 31:904 (April 2005), LR 35:873 (May 2009), amended by the Department of Economic Development, Office of the Secretary, Louisiana Economic Development Corporation, LR 40:

**§111. Application Procedure for Projects**

A. The applicants must submit an application to LED or LEDC on a form provided by LED or LEDC which shall contain, but not be limited to, the following:

1. A business plan that contains an overview of the company, its history, and the business climate in which it operates, including business projections and, in the discretion of the LEDC Board or the LED or LEDC staff, either audited financial statements, or an independent CPA certification of the company's net worth sufficient to demonstrate to LED or LEDC the financial ability of the company considering the circumstances relating to the award, as well as financial statements of any guarantors which may also be required by the LED or LEDC staff in its discretion;

2. A detailed description of the project to be undertaken, along with the factors creating the need, including the purchase, construction, renovation or rebuilding, operation and maintenance plans, a timetable for the project's completion, and the economic scope of the investment involved in the project;

3. A cash flow analysis of the project, providing detailed support for the use of the funding to be provided, and a proposed repayment schedule for any loan for which the applicant has applied which is consistent with the revenues to be generated by the project;

4. Evidence of the number, types and compensation or payroll levels of jobs to be created and/or retained by the company in connection with the project, and the amount of capital investment for the project;

5. A statement or disclosure as to whether or not the company has sought or applied for any other type of financing (public or private) for this project, and the results or disposition of that search and/or application, including documentation from any commercial banks or other lenders specifying the reasons why the banks or other lenders would not extend funding to the applicant;

6. Evidence of the support of the local community and the favorable recommendation of the local governing authority for the applicant's project to be funded as requested or described in the award application; and

7. Any additional information that the LED or LEDC staff may require.

B. The applicants and their applications must meet the general principles of §105, the eligibility requirements under §107, and the criteria provided in §109 above, in order to qualify for an award under this program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:38 (January 1997); amended by the Department of Economic Development, Office of the Secretary, LR 23:1639 (December 1997), LR 25:238 (February 1999), LR 26:237 (February 2000); amended by the Department of Economic Development, Office of

Business Development, Louisiana Economic Development Corporation, LR 29:863 (June 2003), LR 31:904 (April 2005), LR 35:873 (May 2009), amended by the Department of Economic Development, Office of the Secretary, Louisiana Economic Development Corporation, LR 40:

**§113. Submission and Review Procedure for Projects**

A. Applicants must submit their completed application to LED or to LEDC. Submitted applications will be reviewed and evaluated by the staff of LED or LEDC. Input may be required from the applicant, other divisions of the Department of Economic Development, LEDC, and other state agencies as needed in order to:

1. evaluate the strategic importance of the project to the economic well-being of the state and local communities;
2. validate the information presented; and/or
3. determine the overall feasibility of the company's plan.

B. An economic cost-benefit analysis of the project, including an analysis of the direct and indirect net economic impact and fiscal benefits to the state and local communities, will be prepared and utilized by the LED or LEDC staff.

C. Upon determination that an application meets the general principles of §105, the eligibility requirements under §107, and the criteria provided for this program under §109, the secretary of LED and/or the staff of LED or LEDC will then make recommendations to the LEDC Board of Directors. The application will then be reviewed and approved or rejected by the LEDC board in its discretion, after considering the recommendations of the secretary of LED and/or the staff of LED or LEDC. The LED director or the targeted industry specialist in whose industrial area the applicant company participates may also make recommendations to the LEDC board as to the approval or disapproval of the award.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:38 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1639 (December 1997), LR 25:238 (February 1999), LR 26:237 (February 2000); amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:863 (June 2003), LR 31:904 (April 2005), amended LR 35:879 (May 2009), amended by the Department of Economic Development, Office of the Secretary, Louisiana Economic Development Corporation, LR 40:

**§115. General Award Provisions**

A. These provisions shall be applicable to all awards (whether grants or loans) under this program. All agreements shall demonstrate the intent of the company, LED, LEDC and (if a Sponsored Project) the public entity, to enter into the award agreement.

1. Award Agreement. After an award has been approved, a written award agreement, contract or cooperative endeavor agreement will be executed between LEDC, acting through LED, the company or business enterprise and (if a sponsored project) the public entity receiving the award. The agreement will specify the amount of the award; the terms and conditions of any award; a promise to pay or to repay any award in the event of default by the awardee; the performance objectives, obligations and requirements the company and the public entity (if any) will be required to meet; and the compliance requirements to be

enforced in exchange for state assistance, including but not limited to, time lines for investment, for performance, for job retention and/or creation, as well as the compensation or payroll amounts or levels for such jobs. Under the agreement, the public entity (if any) will oversee the progress of the project and the performance of the company. In a sponsored project, LED or LEDC will disburse funds to the public entity in a manner determined by the LED or LEDC staff. In an unsponsored project, LED or LEDC will disburse funds to the company in a manner determined by the LED or LEDC staff.

2. Interest. As determined by the LEDC Board in its discretion, after considering the recommendations of the Secretary and/or the LED or LEDC staff, or by the staff of LED or LEDC in the absence of a determination by the LEDC board, any award either may or may not require the payment of interest.

a. Award Interest. If interest is to be paid on the award, the rate of interest shall not be less than the then current U.S. Government Treasury security rate that coincides with the term or time period of the award at the time of the award approval, nor more than 2.5 percent above such treasury security rate, as determined by the LEDC board or by the LED or LEDC staff. The award may be repaid in cash payments as hereinafter provided, and may also be repaid by allowing performance credits to be appropriately applied against the unpaid or uncredited balance of the award in an amount determined by the LEDC Board or by the LED or LEDC staff. Performance credits, may include jobs credits, payroll credits or jobs/payroll credits, earned by the awardee through the performance of its required obligations during the term of the award agreement; and in the event such credits are utilized and earned, any interest due may also be waived, all as determined by the LEDC board or by the LED or LEDC staff.

b. Default Interest. Interest payable after default may be at a higher rate, but not to exceed 12 percent per annum, from the date of default, if that date can be determined, or otherwise from the date of the discovery of the default, at a rate determined by the LEDC board or by the LED or LEDC staff.

3. Repayment. The award agreement may provide for the repayment of such awarded funds on a stated date, or within a stated time, in annual installments or on demand, as determined by the LEDC board in its discretion, considering the recommendations of the secretary and/or the staff of LED or LEDC as to such repayment terms, or by the staff of LED or LEDC in the absence of a determination by the LEDC board. If necessary and appropriate, a repayment term may be structured with a balloon payment at the end of the last year of the term of the repayment obligation; however, refinancing of the balloon payment will not be permitted.

4. Collateral Ratio. In connection with unsponsored projects, for the purposes of establishing an acceptable award to value (AtV) ratio for collateral in connection with any awards, or a loan to value (LtV) ratio for collateral in connection with loan awards, the applicant must present to the LED or LEDC staff a current appraisal of the property, improvements or other items being funded or being offered as collateral, or its documented purchase price. After the award or loan request has been approved and the value of the

property, improvements or other items to be funded or used as collateral has been substantiated, the LED or LEDC staff will determine the eligible AtV or LtV based on the criteria established by the LED or LEDC staff and these rules. The LED or LEDC staff shall have the discretion and ability to reduce the AtV or LtV based on the applicant's financial ability to repay the award or the loan. If the LED or LEDC staff determines the applicant is financially unable to meet a predetermined debt service coverage ratio of 1.25 to 1 (1.25:1), the award amount or the loan amount shall be reduced in order that the AtV or the LtV may be reduced accordingly to meet the required debt service coverage ratio.

5. Security Interest. When appropriate, and if required by the LEDC board in its discretion, considering the recommendations of the secretary and/or the staff of LED or LEDC as to such security interest, or by the staff of LED or LEDC in the absence of a determination by the LEDC board, the awardee shall execute an appropriate security instrument or document providing the LEDC and/or LED a security interest in either the funded movable and/or immovable property or any other property or assets of the awardee offered as security for the award as the LEDC Board or the LED or LEDC staff shall deem appropriate in the circumstances considering the project and the specific interests and properties relating thereto; such security instrument or document to contain all appropriate, usual, customary, and generally accepted Louisiana security provisions.

6. Financed Lease. When appropriate, and if required by the LEDC board in its discretion, considering the recommendations of the secretary and/or the staff of LED or LEDC as to such security interest, or by the staff of LED or LEDC in the absence of a determination by the LEDC board, the awardee shall execute an appropriate financed lease for the purpose of financing and providing security for the award as the LEDC board or the LED or LEDC staff shall deem appropriate in the circumstances considering the project and the specific interests and properties relating thereto; such financed lease to contain all appropriate, usual, customary, and generally accepted Louisiana lease and security provisions.

7. Examination/Audit of Books, Records and Accounts. LED, LEDC and the state shall retain and shall have the right to examine/audit all appropriate books, records and accounts of the awardee relating to the project at any reasonable time and from time to time, as well as such books, records and assets of any and all guarantors of the obligations of the awardee.

8. Guaranties. Should the circumstances warrant, and if required by the LEDC Board in its discretion, considering the recommendations of the secretary and/or the staff of LED or LEDC as to the need for any such guaranty, a guaranty of an awardee's obligations to pay or repay the award proceeds or any part thereof, and/or a guaranty or guaranties of a company's obligations to perform any or all of its performance requirements or obligations under the award agreement, shall be required from any appropriate person, persons, company, companies, business enterprise, or any public entity, sponsoring entity or governmental authority.

9. Execution of Documents. If an awardee does not execute the appropriate documentation which has been prepared by the staff of LED or LEDC for the award transaction within 60 days after the completed documentation has been forwarded to the awardee, in the LEDC board's discretion the awardee shall be required to appear before the LEDC board to explain the delay, and the LEDC board shall have the right to reconsider the award, and may either withdraw the award or grant an extension of time to the awardee. In the event the awardee does not execute the documentation within the additional time extended to it, the LEDC board, in its discretion, may reconsider and withdraw the award.

#### 10. Funding.

a. Eligible project costs may include costs related to the acquisition, improvement, design, location, construction and/or installation of assets and other improvements, including, but not limited to, the following:

- i. site (land) and/or buildings;
- ii. engineering and architectural expenses related to the project;
- iii. site preparation;
- iv. construction, renovation and/or rebuilding expenses; and/or
- v. building materials;
- vi. and only with regard to unsponsored projects, real estate fees and/or commissions paid in connection with the acquisition or leasing of land, buildings and/or office space for the location of the business operation;
- vii. and again, only with regard to unsponsored projects, purchases or rebuilding of capital machinery and/or equipment that has been approved by the LEDC Board, in its discretion, considering the recommendations of the secretary and/or the staff of LED or LEDC . If any such machinery and/or equipment to be financed by the award is not to be located on property owned by the awardee, the owners, lessors and lessees of such private or public property shall each execute an appropriate written lien waiver or release allowing representatives of LED or LEDC to enter upon such private or public property and remove therefrom any or all of such machinery and/or equipment at any time either the LED or LEDC staff shall determine such to be in its security interests to do so.

b. Project costs ineligible for award funds include, but are not limited to:

- i. recurrent expenses associated with the project (e.g., operation and maintenance costs);
- ii. company moving expenses;
- iii. expenses already approved for funding through the general appropriations bill, or for cash approved through the capital outlay bill, or approved for funding through the state's capital outlay process for which the Division of Administration and the Bond Commission have already approved a line of credit and the sale of bonds;
- iv. refinancing of existing debt, public or private;
- v. only with regard to sponsored projects, costs related to furniture, fixtures, computers, consumables, machinery, equipment, transportation equipment, rolling stock or movable equipment;
- vi. and again, only with regard to sponsored projects, improvements to privately-owned property, unless

provisions are included in the project for the transfer of ownership to a public or quasi-public entity; and

vii. only with regard to unsponsored projects, purchases or rebuilding of capital machinery and/or equipment that has not been approved by the LEDC board, in its discretion, considering the recommendations of the secretary and/or the staff of LED or LEDC.

11. Loan Participation. If and when appropriate, LED or LEDC, as the originator, may share a part or portion of a loan award, with another lender or other lenders, whereby the participant or participants may provide a portion of the loan award funds or may purchase a portion of the loan award; or LED or LEDC, as a participant, may share in a part or portion of a loan originated by another lender or other lenders, by providing a portion of the loan funds or by purchasing a portion of the loan; in either of which cases the participant or participants shall share in the proceeds of the loan repayments and interest income, and an appropriate loan participation agreement shall be executed between the lenders designating the shares of the parties, outlining the various rights and responsibilities of the parties, providing for the servicing and/or collecting of the indebtedness, providing for the payment of any fees and reimbursement of any expenses of the servicing party, and containing the usual and customary provisions of such agreements.

B. Allocation of Amount for Awards. Following the state's appropriation of funds for each fiscal year, the board of directors of LEDC, considering the recommendations of the secretary and/or the staff of LED or LEDC, shall allocate, and may revise from time to time, the amount of such funds available for awards.

1. For all EDAP awards, matching funds shall be a consideration; and

a. the portion of the total project costs financed by the award may not exceed:

i. 90 percent for projects located in parishes with per capita personal income below the median for all parishes; or

ii. 75 percent for projects in parishes with unemployment rates above the statewide average; or

iii. 50 percent for all other projects.

b. other state funds cannot be used as the match for EDAP funds;

c. all monitoring will be done by the staff of LED or LEDC and/or their regional representatives. Expenditures for monitoring or fiscal agents may be deducted from such awards, in the discretion of the LEDC board, considering the recommendations of the secretary and/or the staff of LED or LEDC as to such deductions;

d. the award amount shall not exceed 25 percent of the total funds allocated to the Economic Development Award Program during a fiscal year, plus any rollover funds from the previous year, unless the project creates in excess of 200 jobs, or creates an annual payroll in excess of \$3.1 million;

e. the LEDC board of directors, in its discretion, considering the recommendations of the secretary and/or the staff of LED or LEDC, may limit the amount of awards to effect the best allocation of resources based upon the number of projects requiring funding and the availability of program funds.

2. Resources shall be allocated by the board of directors of LEDC, in its discretion, considering the recommendations of the secretary and/or the staff of LED or LEDC, in order to effect the best allocation of resources, based upon the number of projects anticipated to require similar funding and the availability of program funds.

C. Conditions for Disbursement of Funds

1. With regard to sponsored projects, award funds will be disbursed to the sponsoring entity, and with regard to unsponsored projects, award funds will be disbursed to the awardee/company. Award funds will be available for disbursement as needed, on a reimbursement basis in accordance with the award agreement following submission of required documentation to LED or LEDC from the sponsoring entity and/or the awardee/company, as the case may be. After the achievement of conditions required by the award agreement before the advancement of funds will be permitted, funding disbursements or advances of award funds may be made to the awardee at any time during the term of the award agreement, either before, at the same time as, or after other performance requirements or objectives have been accomplished or performance credits have been earned by the awardee.

2. Program Funding Source

a. If the program is funded through the state's general appropriations bill, only funds spent on the project after the approval of the award by the LEDC Board of Directors will be considered eligible for reimbursement.

b. If the program is funded through a capital outlay bill, eligible expenses cannot be incurred until a cooperative endeavor agreement (contract) has been agreed upon, signed and executed.

3. Award funds will not be available for disbursement until:

a. LED or LEDC receives signed commitments by the project's other financing sources (public and/or private);

b. LED or LEDC receives signed confirmation that all technical studies or other analyses (e.g., environmental or engineering studies), and licenses or permits needed prior to the start of the project have been completed, issued and/or obtained, in the event such are required in connection with the project; and

c. all other closing conditions specified in the award agreement have been satisfied.

4. Awardees will be eligible for the advancement of award funds on an as-needed reimbursement basis, with requests for such funds supplemented with copies of invoices or appropriate documentation showing the use of the funds, after the achievement of any, all or substantially all of the conditions required by the award agreement before the advancement of funds can be made have been met, achieved, performed or completed. After the awardee has met or achieved such conditions, or performed or completed or substantially performed or substantially completed the conditions required by the award agreement before the advancement of funds can be made, the award amount may be disbursed to the awardee as provided in the paragraphs below after the staff of LED or LEDC or its designee has determined, or, if deemed to be appropriate by the staff, inspects the project, circumstances or documentation to

assure that all or substantially all of the conditions required by the award agreement before the advancement of funds can be made have been met, achieved, performed or completed. Such conditions shall be considered substantially met, substantially performed or substantially completed when the LED or LEDC staff has determined, in its discretion, that the benefits to the state or results anticipated or expected as a result of the conditions to be performed have been achieved, even though 100 percent of all stated conditions of the award agreement may not have been fully met or achieved.

5. After the conditions required by the award agreement have been met, achieved or satisfactorily performed or completed as provided above, and in the event the award is intended to fund one or more purchases, all award funds (100 percent) needed to fund the purchase price shall be available for disbursement or reimbursement following the completion of each of the respective purchases and appropriate inspections of the project by the LED or LEDC staff, or following the receipt and the LED or LEDC staff approval of copies of appropriate invoices or sales describing the items or improvements purchased.

6. After the conditions required by the loan award agreement have been met, achieved or satisfactorily performed or completed as provided above, awardees will be eligible for disbursement or reimbursement of other award funds for the performance of tasks, work or construction projects at 90 percent of the award amount until all or substantially all of the tasks or work required by the award agreement have been performed or completed. Ten percent of the amount of the award shall be held as a "retainage" until the completion or the substantial completion of such work. After the awardee has performed or completed or substantially performed or substantially completed the tasks or work required by the award agreement, the final 10 percent "retainage" of the award amount will be paid after the LED or LEDC staff or its designee inspects the project to assure that all or substantially all of the tasks or work required by the award agreement have been performed or completed. Such tasks or work shall be considered substantially performed or substantially completed when the LED or LEDC staff has determined that the benefits to the state anticipated or expected as a result of the project, tasks or work performed have been achieved, even though 100 percent of all stated objectives of the award agreement may not have been fully achieved.

#### D. Compliance Requirements

1. Companies and public entities shall be required to submit progress reports, describing the progress toward the achievement of performance objectives, obligations and requirements specified in the award agreement. Progress reports by a public entity and/or a company shall include a review and certification of a company's award repayment record, if appropriate, the company's hiring records and the extent of a company's compliance with contract employment commitments, including the number of jobs created, retained and/or maintained, and the compensation or payroll amounts or levels achieved and maintained. Copies of the company's Louisiana Workforce Commission (LWC) ES-4 Forms (quarterly report of wages paid) filed by the company may be required to be submitted with periodic progress reports or as otherwise requested by the LED or LEDC staff to support

the company's reported progress toward the achievement of performance objectives, job creation, employment and compensation or payroll level requirements. Further, the public entity shall oversee the timely submission of reporting requirements of the company to LED or LEDC.

2. Award agreements will contain "clawback" or refund provisions to protect the state in the event of a default. In the event a company or public entity fails to timely start or to proceed with and/or complete its project, or fails to timely meet its performance objectives and/or any job creation or employment requirements, including but not limited to the retention or creation of the number of jobs or the achieving or maintaining of compensation or payroll amounts or levels within the time and for the term agreed, as specified in its award agreement with LED and LEDC; if the awardee/company ceases its operations, reduces its employment numbers or payroll amounts or levels to less than the required amounts; if the awardee/company transfers ownership of the company (or substantially all of its assets) to an entity that is not approved by the state; any such acts, omissions or failures shall constitute a default under the award agreement, and LED and LEDC shall retain all rights to withhold award funds, modify the terms and conditions of the award, and to reclaim disbursed funds from the company and/or public entity in an amount commensurate with the scope of the unmet performance objectives and the foregone benefits to the state. Reclamation shall not begin unless the LED or LEDC staff has determined, after an analysis of the benefits of the project to the state and the unmet performance objectives, that the state has not satisfactorily or adequately recouped its costs through the benefits provided by the project.

3. In the event an applicant, a company, public entity, awardee or other party to an award agreement knowingly files a false statement in its application or in a progress report or other filing, the applicant, company, public entity, awardee or other party to an award agreement and/or their representatives may be guilty of the offense of filing false public records, and may be subject to the penalty provided for in R.S. 14:133. In the event an applicant, company, public entity, awardee or other party to an award agreement is reasonably believed to have filed a false statement in its application, a progress report or any other filing, LED and/or LEDC is authorized to notify the district attorney of East Baton Rouge Parish, Louisiana, and may also notify any other appropriate law enforcement official or personnel, so that an appropriate investigation may be undertaken with respect to the false statement and the application of state funds to the project.

4. LED and LEDC shall retain the right to require and/or conduct, at any reasonable time and from time to time, financial and performance audits of a company, public entity, or guarantor, and its project, including all relevant accounts, records and documents of the company, the public entity and/or the guarantor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 23:38 (January 1997); amended by the Department of Economic Development, Office of the Secretary, LR 23:1640 (December 1997), LR 25:239 (February 1999), LR 26:238 (February 2000); amended by the Department of Economic

Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:864 (June 2003), LR 31:905 (April 2005), LR 35:874 (May 2009), amended by the Department of Economic Development, Office of the Secretary, Louisiana Economic Development Corporation, LR 40:

**§§117. - 129. Reserved.**

**Subchapter B. Economic Development Loan Program (EDLOP) Repealed.**

**§131. Economic Development Loan Program (EDLOP); Preamble and Purpose**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 31:906 (April 2005), amended LR 35:876 (May 2009), repealed by the Department of Economic Development, Office of the Secretary, Louisiana Economic Development Corporation, LR 40:

**§133. Definitions**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 31:907 (April 2005), amended LR 35:876 (May 2009), repealed by the Department of Economic Development, Office of the Secretary, Louisiana Economic Development Corporation, LR 40:

**§135. General Principles**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 31:907 (April 2005), amended LR 35:877 (May 2009), repealed by the Department of Economic Development, Office of the Secretary, Louisiana Economic Development Corporation, LR 40:

**§137. Eligibility**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 31:908 (April 2005), amended LR 35:878 (May 2009), repealed by the Department of Economic Development, Office of the Secretary, Louisiana Economic Development Corporation, LR 40:

**§139. Criteria for Projects**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 31:908 (April 2005), amended LR 35:878 (May 2009), repealed by the Department of Economic Development, Office of the Secretary, Louisiana Economic Development Corporation, LR 40:

**§141. Application Procedure for Projects**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 31:909 (April 2005), amended LR 35:879 (May 2009), repealed by the

Department of Economic Development, Office of the Secretary, Louisiana Economic Development Corporation, LR 40:

**§143. Submission and Review Procedure for Projects Repealed.**

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 31:909 (April 2005), amended LR 35:879 (May 2009), repealed by the Department of Economic Development, Office of the Secretary, Louisiana Economic Development Corporation, LR 40:

**§145. General Loan Award Provisions**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 31:909 (April 2005), amended LR 35:879 (May 2009), repealed by the Department of Economic Development, Office of the Secretary, Louisiana Economic Development Corporation, LR 40:

**Family Impact Statement**

The state agency has considered the impact of such rules and it is anticipated that the proposed rule amendment should have no significant adverse impact on any family as defined by R.S. 49:972.D, or on family formation, stability and autonomy. There should be no significant adverse impact on: the stability of the family; the authority and rights of parents regarding the education and supervision of their children; the functioning of the family; family earnings and family budget; the behavior and personal responsibility of children; or the ability of the family or a local government to perform the function as contained in the proposed Rule.

**Poverty Impact Statement**

The state agency has considered the impact of such rules and it is anticipated that the proposed Rule amendment should have no significant adverse impact on child, individual, or family poverty, as defined by R.S. 49:973.D. There should be no significant adverse impact on: household income, assets, and financial security; early childhood development and preschool through postsecondary education development; employment and workforce development; taxes and tax credits; or child and dependent care, housing, health care, nutrition, transportation and utilities assistance.

**Small Business Statement**

It is anticipated that the proposed Rule amendment should have no significant adverse impact on small businesses as defined in the Regulatory Flexibility Act (R.S. 49:965.2 through 965.8). The agency, consistent with health, safety, environmental and economic factors, has considered and, where possible, utilized regulatory methods in drafting the proposed Rule to accomplish the objectives of applicable statutes while minimizing any anticipated adverse impact on small businesses.

**Public Comments**

Interested persons may submit written data, views, comments or arguments regarding the proposed action directed to: Robert L. Cangelosi, Deputy General Counsel, Legal Division, Louisiana Department of Economic Development, P. O. Box 94185, Baton Rouge, LA 70804-9185; or physically delivered to: Capitol Annex Building, Second Floor, Room 229, 1051 North 3rd Street, Baton Rouge, LA 70802. All comments, etc., must be submitted

and received not later than 4 p.m., on Friday, December 20, 2013.

**Public Hearing**

A public hearing will be held on the proposed action on Monday, December 23, 2013, at 10:30 a.m., in the Capitol Annex Building, First Floor, Room 137, 1051 North 3rd Street, Baton Rouge, LA 70802. No preamble regarding the proposed action is available.

Anne G. Villa  
Undersecretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Economic Development Award Program  
(EDAP), Economic Development Loan Program  
(EDLOP) and Economic Development Site Readiness  
Program (EDRED)**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO  
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rule amendments amend the rules for existing programs [Economic Development Award Program (EDAP) and Economic Development Loan Program (EDLOP)]. There will be no incremental costs or savings to state or local governmental units due to the implementation of these amendments to these rules. Both programs are administered by existing department staff with no additional appropriations required.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE  
OR LOCAL GOVERNMENTAL UNITS (Summary)**

The revisions to the existing rules for these programs do not change any existing fees in the programs, so there will be no expected impact or effect on revenue collections of state or local governmental units with regard to the proposed rule amendments as they relate to these existing programs.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO  
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL  
GROUPS (Summary)**

The amendments to the rules for these programs do not affect the requirement of adherence to the application procedures which already involve submission of paperwork by the applicants. So there will be no estimated additional costs to directly affected persons or non-governmental groups. However, recipients will have some economic benefits by obtaining access to shorter rules (by the combination of two programs into one and the elimination of repetition) and a simpler process for awards, credits earned and payback requirements under the revised program made available through the amendments being made to the rules for these existing programs.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT  
(Summary)**

Public entities and businesses requesting and receiving benefits under these programs for which the rules are being amended will gain competitively over public entities and businesses that do not request or receive the program's benefits. While employment may increase in businesses to which economic development awards are being made, employment may be lessened in other competing businesses that do not request assistance through or participate in these existing programs.

Anne G. Villa  
Undersecretary  
1311#095

Gregory V. Albrecht  
Chief Economists  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Economic Development  
Office of the Secretary  
Office of Business Development  
and  
Louisiana Economic Development Corporation**

Louisiana Seed Capital Program (LSCP) and Seed Capital Program for the State Small Business Credit Initiative (SSBCI) Program (LAC 19:VII.7713 and 8713)

The Louisiana Department of Economic Development, Office of the Secretary, Office of Business Development, and the Louisiana Economic Development Corporation, pursuant to the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and under the authority of R.S. 36:104, 36:108, 51:2302, and 51:2312, hereby provide notice of their intent to amend, supplement and expand portions of the rules of the Louisiana Seed Capital Program (LSCP) provided in LAC 19:VII.Chapter 77, and the Seed Capital Program for the State Small Business Credit Initiative (SSBCI) Program provided in LAC 19:VII.Chapter 87; amending particularly §7713.B, 1, and §8713.B, and C, increasing the maximum total dollar amount of a Louisiana Economic Development Corporation (LEDC) match investment in an eligible seed venture capital fund.

The Department of Economic Development, Office of the Secretary, Office of Business Development, and the Louisiana Economic Development Corporation, have found a need to amend, supplement and expand §7713.B, 1, and §8713.B, and C, of the rules of the Louisiana Seed Capital Program (LSCP) and the Seed Capital Program for the State Small Business Credit Initiative (SSBCI) Program, increasing the maximum total dollar amount of an LEDC match investment in an eligible seed venture capital fund. The amendments to these rules will enhance and expand economic development in Louisiana; will stimulate the flow of capital and other financial assistance for the sound financing of the development, expansion, and retention of business concerns in Louisiana; will provide higher levels of employment, income growth, and expanded economic opportunities in all areas of our State; and will further help secure the creation or retention of jobs created by businesses in Louisiana. Without the amendments to these rules the state may suffer the loss of business investment and economic development projects creating economic growth in Louisiana and creating or retaining jobs that would improve the standard of living and enrich the quality of life for citizens of this State.

**Title 19  
CORPORATIONS AND BUSINESS  
Part VII. Louisiana Economic Development  
Corporation**

**Subpart 11. Louisiana Seed Capital Program (LSCP)  
Chapter 77. Louisiana Seed Capital Program (LSCP)  
§7713. Investments**

- A. - A.3. . . .
- B. Match Investment.

1. A qualified or eligible fund may receive a match investment equal to \$1 of LEDC funds for each \$2.00 of funds privately raised by the applicant fund. The maximum

total dollar amount of an LEDC match investment in an eligible fund shall not exceed \$2,000,000.

B.2. - C.1. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 26:2254 (October 2000), amended by the Department of Economic Development Office of the Secretary, Office of Business Development and Louisiana Economic Development Corporation, LR 38:990 (April 2013), amended, LR 40:

**Chapter 87. Seed Capital Program for the State Small Business Credit Initiative (SSBCI) Program**

**§8713. Investments**

A. ...

B. A qualified or eligible fund may receive a match investment equal to \$1 of LEDC funds for each \$1.50 of funds privately raised by the applicant fund. The maximum total dollar amount of an LEDC match investment in an eligible fund shall not exceed \$2,000,000.

C. LEDC investments made in a qualified Seed Capital Fund will not exceed an initial investment of \$450,000, with up to four expected follow-up investments, but shall not exceed a total investment of \$2,000,000 per fund.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development and Louisiana Economic Development Corporation, LR 38:992 (April 2012), amended, LR 40:

**Family Impact Statement**

The state agency has considered the impact of such rules and it is anticipated that the proposed Rule amendment should have no significant adverse impact on any family as defined by R.S. 49:972.D, or on family formation, stability and autonomy. There should be no significant adverse impact on: the stability of the family; the authority and rights of parents regarding the education and supervision of their children; the functioning of the family; family earnings and family budget; the behavior and personal responsibility of children; or the ability of the family or a local government to perform the function as contained in the proposed Rule.

**Poverty Impact Statement**

The state agency has considered the impact of such rules and it is anticipated that the proposed Rule amendment should have no significant adverse impact on child, individual, or family poverty, as defined by R.S. 49:973.D. There should be no significant adverse impact on: household income, assets, and financial security; early childhood development and preschool through postsecondary education development; employment and workforce development; taxes and tax credits; or child and dependent care, housing, health care, nutrition, transportation and utilities assistance.

**Small Business Statement**

It is anticipated that the proposed Rule amendment should have no significant adverse impact on small businesses as defined in the Regulatory Flexibility Act (R.S. 49:965.2 through 965.8). The agency, consistent with health, safety, environmental and economic factors, has considered and, where possible, utilized regulatory methods in drafting the

proposed rule to accomplish the objectives of applicable statutes while minimizing any anticipated adverse impact on small businesses.

**Public Comments**

Interested persons may submit written data, views, comments or arguments regarding the proposed action directed to: Robert L. Cangelosi, Deputy General Counsel, Legal Division, Louisiana Department of Economic Development, P. O. Box 94185, Baton Rouge, Louisiana 70804-9185; or physically delivered to: Capitol Annex Building, Second Floor, Room 229, 1051 North 3rd Street, Baton Rouge, Louisiana, 70802. All comments, etc., must be submitted and received not later than 4:00 P. M., on Friday, December 20, 2013.

**Public Hearing**

A public hearing will be held on the proposed action on Monday, December 23, 2013, at 10:30 A.M., in the Capitol Annex Building, First Floor, Room 137, 1051 North 3rd Street, Baton Rouge, LA 70802. No preamble regarding the proposed action is available.

Anne G. Villa  
Undersecretary

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**  
**RULE TITLE: Louisiana Seed Capital Program (LSCP) and Seed Capital Program for the State Small Business Credit Initiative (SSBCI) Program**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule amendments amend the rules for existing programs [Louisiana Seed Capital Program (LSCP) and Seed Capital Program for the State Small Business Credit Initiative (SSBCI) Program]. There will be no incremental costs or savings to state or local governmental units due to the implementation of these amendments to these rules. Both programs are administered by existing department staff with no additional appropriations required. Federal funds are already appropriated in the department's base budget for this purpose and will be utilized for any additional administrative costs that may arise in connection with the amendments to the rules for these existing programs.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The revisions to the existing rules for these programs do not change any existing fees in the programs, so there will be no expected impact or effect on revenue collections of state or local governmental units with regard to the proposed rule amendments as they relate to these existing programs.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The amendments to the rules for these programs do not affect the requirement of adherence to the application procedures which already involve submission of paperwork by the applicants. So there will be no estimated additional costs to directly affected persons or non-governmental groups. However, recipients will benefit by obtaining access to an increase in the maximum dollar amount of match investments in eligible seed venture capital funds made available through the amendments being made to the rules for these existing programs.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Seed venture capital funds/organizations/entities and new business enterprises in which investments will be made that request and receive benefits under these programs for which the rules are being amended will gain competitively over such entities that do not request or receive the program's benefits. While employment may increase in businesses enterprises in which seed capital investments are made, employment may be lessened in other competing businesses that do not request assistance through or participate in these existing programs.

Anne G. Villa  
Undersecretary  
1311#094

Gregory V. Albrecht  
Chief Economist  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Economic Development  
Office of the Secretary  
Office of Business Development  
and  
Louisiana Economic Development Corporation**

Small Business Loan and Guaranty Program (SBL and GP) and State Small Business Credit Initiative (SSBCI) Program (LAC 19:VII.109 and 309)

The Louisiana Department of Economic Development, Office of the Secretary, Office of Business Development, and Louisiana Economic Development Corporation, pursuant to the provisions of the Administrative Procedure Act, LA. R.S. 49:950 et seq., and under the authority of R.S. 36:104, 36:108, 51:2302, and 51:2312, hereby provide notice of their intent to amend, supplement and expand portions of the rules of the Small Business Loan and Guaranty Program (SBL and GP) provided in LAC 19:VII.Chapter 1, and the State Small Business Credit Initiative (SSBCI) Program provided in LAC 19:VII.Chapter 3; amending particularly §109.F.1, and §309.E.1, regarding the term periods of various types of Louisiana Economic Development Corporation (LEDC) loan guaranties.

The Department of Economic Development, Office of the Secretary, Office of Business Development, and Louisiana Economic Development Corporation, have found a need to amend, supplement and expand §109.F.1, and §309.E.1, of the rules of the Small Business Loan and Guaranty Program (SBL and GP) and the State Small Business Credit Initiative (SSBCI) Program, regarding the extension of term periods of various types of LEDC loan guaranties, including revolving lines of credit, equipment term loans, and real estate term loans. The amendments to these rules will enhance and expand economic development in Louisiana; will stimulate the flow of capital and other financial assistance for the sound financing of the development, expansion, and retention of small business concerns in Louisiana; and will further help secure the creation or retention of jobs created by small businesses in Louisiana. Without the amendments to these rules the state may suffer the loss of small business investment and economic development projects creating economic growth in Louisiana and creating or retaining jobs that would improve the standard of living and enrich the quality of life for citizens of this state.

**Title 19  
CORPORATIONS AND BUSINESS  
Part VII. Louisiana Economic Development  
Corporation**

**Subpart 1. Small Business Loan and Guaranty Program (SBL and GP)**

**Chapter 1. Loan and Guaranty Policies for the Small Business Loan and Guaranty Program (SBL and GP)**

**§109. General Loan, Credit, Guaranty and Participation Provisions**

- A. - E.4. ...
- F. Terms

1. Maturity, collateral, and other loan terms shall be negotiated between the borrower and the applicant/lending institution, and the LEDC shall have an opportunity to approve the terms of such loans prior to the closing, but guaranty term periods with regard to various types of loan guaranties shall be limited as follows.

- a. For revolving lines of credit (RLOC), guaranty term periods may extend for up to and not exceed 7 years.
- b. For equipment term loans, guaranty term periods may extend for up to and not exceed 10 years.
- c. For real estate term loans, guaranty term periods may extend for up to and shall not exceed 25 years.

- G. - H.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 15:448 (June 1989), amended LR 23:41 (January 1997), LR 26:2256 (October 2000), amended by the Department of Economic Development, Office of the Secretary, Office of Business Development and Louisiana Economic Development Corporation, LR 38:995 (April 2012), LR 40:

**Chapter 3. Loan and Guaranty Policies for the State Small Business Credit Initiative (SSBCI) Program**

**§309. General Loan, Credit, Guaranty and Participation Provisions**

- A. - D.1.b. ...
- E. Terms

1. For loan guaranties included in this Chapter 3 Program, all of the provisions contained in §109.F.1.a, b and c of Chapter 1 of the Small Business Loan and Guaranty Program, with regard to term periods of various types of loan guaranties, shall also apply to this Chapter 3 program.

- F. - F.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development and Louisiana Economic Development Corporation, LR 38:999 (April 2012), amended LR 40:

**Family Impact Statement**

The state agency has considered the impact of such rules and it is anticipated that the proposed Rule amendment should have no significant adverse impact on any family as defined by R.S. 49:972(D), or on family formation, stability and autonomy. There should be no significant adverse impact on: the stability of the family; the authority and rights of parents regarding the education and supervision of their children; the functioning of the family; family earnings and family budget; the behavior and personal responsibility of

children; or the ability of the family or a local government to perform the function as contained in the proposed Rule.

#### **Poverty Impact Statement**

The state agency has considered the impact of such rules and it is anticipated that the proposed Rule amendment should have no significant adverse impact on child, individual, or family poverty, as defined by R.S. 49:973(D). There should be no significant adverse impact on: household income, assets, and financial security; early childhood development and preschool through postsecondary education development; employment and workforce development; taxes and tax credits; or child and dependent care, housing, health care, nutrition, transportation and utilities assistance.

#### **Small Business Statement**

It is anticipated that the proposed Rule amendment should have no significant adverse impact on small businesses as defined in the Regulatory Flexibility Act (R.S. 49:965.2-965.8). The agency, consistent with health, safety, environmental and economic factors, has considered and, where possible, utilized regulatory methods in drafting the proposed Rule to accomplish the objectives of applicable statutes while minimizing any anticipated adverse impact on small businesses.

#### **Public Comments**

Interested persons may submit written data, views, comments or arguments regarding the proposed action directed to Robert L. Cangelosi, Deputy General Counsel, Legal Division, Louisiana Department of Economic Development, P.O. Box 94185, Baton Rouge, LA 70804-9185, or physically delivered to Capitol Annex Building, Second Floor, Room 229, 1051 North Third Street, Baton Rouge, LA, 70802. All comments, etc., must be submitted and received not later than 4 p.m., on Friday, December 20, 2013.

#### **Public Hearing**

A public hearing will be held on the proposed action on Monday, December 23, 2013, at 10:30 a.m., in the Capitol Annex Building, first floor, room 137, 1051 North Third Street, Baton Rouge, LA 70802. No preamble regarding the proposed action is available.

Anne G. Villa  
Undersecretary

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

#### **RULE TITLE: Louisiana Economic Development Corporation Small Business Loan and Guaranty Program (SBL and GP) and State Small Business Credit Initiative (SSBCI) Program**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rule amendments amend the rules for existing programs [Small Business Loan and Guaranty Program (SBL and GP) and State Small Business Credit Initiative (SSBCI) Program]. There will be no incremental costs or savings to state or local governmental units due to the implementation of these amendments to these rules. Both programs are administered by existing department staff with no additional appropriations required. Federal funds are already appropriated in the department's base budget for this purpose and will be utilized for any additional administrative costs that may arise in

connection with the amendments to the rules for these existing programs.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The revisions to the existing rules for these programs do not change any existing fees in the programs, so there will be no expected impact or effect on revenue collections of state or local governmental units with regard to the proposed rule amendments as they relate to these existing programs.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The amendments to the rules for these programs do not affect the requirement of adherence to the application procedures which already involve submission of paperwork by the applicants. So there will be no estimated additional costs to directly affected persons or non-governmental groups. However, recipients will benefit by obtaining access to longer terms on credit and loan guaranties made available to them through the amendments being made to the rules for these existing programs.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

Lending institutions and borrowing business enterprises requesting and receiving benefits under these programs for which the rules are being amended will gain competitively over lenders and borrowers that do not request or receive the programs' benefits. While employment may increase in participating/borrowing business enterprises, employment may be lessened in other competing businesses that do not request assistance through or participate in these existing programs.

Anne G. Villa  
Undersecretary  
1311#093

Gregory V. Albrecht  
Chief Economist  
Legislative Fiscal Office

### **NOTICE OF INTENT**

#### **Board of Elementary and Secondary Education**

Bulletin 741—Louisiana Handbook for School  
Administrators—Carnegie Credit and Credit Flexibility  
(LAC 28: CXV.2314)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 741—Louisiana Handbook for School Administrators* §2314. Carnegie Credit and Credit Flexibility. The revised policy clarifies that schools must provide a minimum of 7,965 instructional minutes and students must complete a minimum of 7,515 minutes to earn a Carnegie credit.

#### **Title 28**

#### **EDUCATION**

#### **Part CXV. Bulletin 741—Louisiana Handbook for School Administrators**

#### **Chapter 23. Curriculum and Instruction §2314. Carnegie Credit and Credit Flexibility**

A. - A.2. ...

B. When awarding credit based on instructional time, LEAs shall provide a minimum of 7,965 instructional minutes for one Carnegie credit, and students shall be in attendance for a minimum of 7,515 minutes. In order to grant one-half Carnegie credit, LEAs shall provide a

minimum of 3,983 instructional minutes, and students shall be in attendance for a minimum of 3,758 minutes.

C. - G1. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:154.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, amended LR 40:

#### Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? No.

#### Poverty Impact Statement

In accordance with Section 973 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Poverty Impact Statement on the Rule proposed for adoption, amendment, or repeal. All Poverty Impact Statements shall be in writing and kept on file in the state agency which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records. For the purposes of this Section, the word "poverty" means living at or below one hundred percent of the federal poverty line.

1. Will the proposed Rule affect the household income, assets, and financial security? No.

2. Will the proposed Rule affect early childhood development and preschool through postsecondary education development? No.

3. Will the proposed Rule affect employment and workforce development? No.

4. Will the proposed Rule affect taxes and tax credits? No.

5. Will the proposed Rule affect child and dependent care, housing, health care, nutrition, transportation, and utilities assistance? Yes.

#### Small Business Statement

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed rule that will accomplish the

objectives of applicable statutes while minimizing the adverse impact of the proposed rule on small businesses.

#### Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., December 9, 2013, to Heather Cope, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Heather Cope  
Executive Director

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

#### RULE TITLE: **Bulletin 741—Louisiana Handbook for School Administrators Carnegie Credit and Credit Flexibility**

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed policy revisions do not impact costs for state or local governmental units.

The proposed policy change clarifies that schools must provide a minimum of 7,965 instructional minutes and students must complete a minimum of 7,515 minutes to earn a Carnegie credit. In addition, the policy clarifies that, for a half credit, LEAs shall provide a minimum of 3,983 instructional minutes and students shall be in attendance for a minimum of 3,758 minutes.

#### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This policy will have no effect on revenue collections of state or local governmental units.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There will be no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This policy will have no determinable effect on competition and employment.

Beth Scioneaux  
Deputy Superintendent  
1311#040

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

### NOTICE OF INTENT

#### Board of Elementary and Secondary Education

Bulletin 741 (Nonpublic)—Louisiana Handbook  
for Nonpublic School Administrators—Programs of Study  
(LAC 28:LXXIX.2102)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 741—Louisiana Handbook for Nonpublic School Administrators*: §2102. Carnegie Credit and Credit Flexibility. The revision adds two classifications of approved nonpublic schools. The revised policy clarifies that schools must provide a minimum of 7,965 instructional minutes and students must complete a minimum of 7,515 minutes to earn a Carnegie credit.

**Title 28  
EDUCATION**

**Part LXXIX. Bulletin 741 (Nonpublic)—Louisiana  
Handbook for Nonpublic School  
Administrators—Programs of Study**

**§2102. Carnegie Credit and Credit Flexibility**

A. - A.2. ...

B. When awarding credit based on instructional time, LEAs shall provide a minimum of 7,965 instructional minutes for one Carnegie credit, and students shall be in attendance for a minimum of 7,515 minutes. In order to grant one-half Carnegie credit, LEAs shall provide a minimum of 3,983 instructional minutes, and students shall be in attendance for a minimum of 3,758 minutes.

C. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), and (15), R.S. 17:7(6), R.S. 17:10, and R.S. 17:22(6).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:1444 (June 2013), amended LR 40:

**Family Impact Statement**

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? No.

**Poverty Impact Statement**

In accordance with Section 973 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Poverty Impact Statement on the Rule proposed for adoption, amendment, or repeal. All Poverty Impact Statements shall be in writing and kept on file in the state agency which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records. For the purposes of this Section, the word "poverty" means living at or below one hundred percent of the federal poverty line.

1. Will the proposed Rule affect the household income, assets, and financial security? No.

2. Will the proposed Rule affect early childhood development and preschool through postsecondary education development? No.

3. Will the proposed Rule affect employment and workforce development? No.

4. Will the proposed Rule affect taxes and tax credits? No.

5. Will the proposed Rule affect child and dependent care, housing, health care, nutrition, transportation, and utilities assistance? Yes.

**Small Business Statement**

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses

**Public Comments**

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., December 9, 2013, to Heather Cope, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Heather Cope  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Bulletin 741 (Nonpublic)  
Louisiana Handbook for Nonpublic School  
Administrators—Programs of Study**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO  
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed policy change will not result in any costs or savings to state or local governmental units.

The proposed policy change clarifies that schools must provide a minimum of 7,965 instructional minutes and students must complete a minimum of 7,515 minutes to earn a Carnegie credit. In addition, the policy clarifies that, for a half credit, LEAs shall provide a minimum of 3,983 instructional minutes and students shall be in attendance for a minimum of 3,758 minutes.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE  
OR LOCAL GOVERNMENTAL UNITS (Summary)**

This policy will have no effect on revenue collections of state or local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO  
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL  
GROUPS (Summary)**

There will be no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT  
(Summary)**

This policy will have no effect on competition and employment.

Beth Scioneaux  
Deputy Superintendent  
1311#038

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for  
State Certification of School Personnel  
(LAC 28:CXXXI.233, 235, 237, 243, 305, 309,  
311, 313, 323, 348, 625, 627, 633, and 648)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 746—Louisiana Standards for State Certification of School Personnel*: §233. The Practitioner Teacher Program Alternative Path to Certification (Minimum Requirements); §235. The Master's Degree Program Alternative Path to Certification (Minimum Requirements); §237. Certification-Only Program Alternative Path to Certification; §243. PRAXIS Exams and Scores; §305. Professional Level Certificates; §309. Out-of-State (OS) Certificate; §311. World Language Certificate (WLC) PK-12; §313. Practitioner Licenses; §323. Temporary Authority to Teach (TAT); §348. Math for Professionals Certificate; §625. Requirements to add Early Interventionist Birth to Five Years; §627. Requirements to add Hearing Impaired K-12; §633. Requirements to add Visual Impairments/Blind K-12; and §648. Algebra I. The proposed policy will allow the adoption of the following Praxis exams: Special Education: Early Childhood (0691); Special Education: Teaching Students with Visual Impairments (0282); Special Education: Education of Deaf and Hard of Hearing (0272); Environmental Education (0831); Core Academic Skills for Educators: Reading (5712), Writing (5722) and Mathematics (5732); Middle School English (5047); Middle School Mathematics (5169); English Language Arts: Content and Analysis (5039); and Mathematics: Content Knowledge (5161), in addition to setting a passing score for the current Professional School Counselor (0421 or 5421) exam previously adopted. The Core Academic Skills for Educators in Reading, Writing and Mathematics and the new content exams for middle/secondary education in English and mathematics are aligned with the Common Core State Standards.

#### Title 28

#### EDUCATION

#### Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel

#### Chapter 2. Louisiana Educator Preparation Programs

#### Subchapter B. Alternate Teacher Preparation Programs

#### §233. The Practitioner Teacher Program Alternative Path to Certification (Minimum Requirements)

A. - B.3. ...

4. pass the Praxis Core Academic Skills for Educators in reading, writing, and mathematics. Candidates who already possess a graduate degree will be exempted from this requirement;

B.5. - H. ...

1. Program requirements must be met within a three year time period. For certification purposes, private providers and colleges or universities will submit signed statements to the Department of Education indicating that the student completing the Practitioner Teacher Program

alternative certification path met the following requirements:

1. passed the Core Academic Skills for Educators components of the Praxis

NOTE: This test was required for admission.

1.2. - L. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), (11), and (15), R.S. 17:7(6), R.S. 17:10, R.S.

17:22(6), R.S. 17:391.1-391.10, and R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1790 (October 2006), amended LR 34:1387 (July 2008), LR 35:1477 (August 2009), LR 36:2261 (October 2010), LR 36:2263 (October 2010), LR 37:549 (February 2011), LR 37:558 (February 2011), LR 37:3208 (November 2011), LR 40:

#### §235. The Master's Degree Program Alternative Path to Certification (Minimum Requirements)

A. - C.2. ...

3. pass the Praxis Core Academic Skills for Educators in reading, writing, and mathematics (individuals who already possess a graduate degree will be exempted from this requirement);

C.4. - D.5.a. ...

E. Certification Requirements. Colleges/universities will submit signed statements to the Louisiana Department of Education indicating that the student completing the Master's Degree Program alternative certification path met the following requirements:

1. passed Core Academic Skills for Educators components of Praxis (as required for admission);

2. - 5.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), (11), and (15), R.S. 17:7(6), R.S. 17:10, R.S.

17:22(6), R.S. 17:391.1-391.10, and R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1792 (October 2006), amended LR 35:1480 (August 2009), LR 36:2262 (October 2010), LR 36:2263 (October 2010), LR 37:549 (February 2011), LR 37:3209 (November 2011), LR 40:

#### §237. Certification-Only Program Alternative Path to Certification

A. - C.3.b. ...

4. Testing Requirements

a. Pass the Praxis Core Academic Skills for Educators. Candidates who already possess a graduate degree will be exempted from this requirement. An ACT composite score of 22 or a SAT combined verbal/critical reading and math score of 1030 may be used in lieu of Praxis Core Academic Skills for Educators exams.

C.4.b. - E.2.c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), (11), and (15), R.S. 17:7(6), R.S. 17:10, R.S.

17:22(6), R.S. 17:391.1-391.10, and R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1794 (October 2006), amended LR 35:1482 (August 2009), LR 36:2262 (October 2010), LR 36:2263 (October 2010), LR 37:550 (February 2011), LR 37:3210 (November 2011), LR 40:

#### Subchapter D. Testing Required for Licensure Areas

#### §243. PRAXIS Exams and Scores

A. A teacher applicant for certification must successfully complete the appropriate written or computer delivered tests<sup>1</sup> identified prior to Louisiana teacher certification.

1. Core Academic Skills for Educators<sup>2</sup>. Teacher applicants in all content areas must pass all three Praxis Core Academic Skills for Educators tests.

<sup>1</sup>To differentiate the computer delivered tests, Educational Testing Service has placed the number “5” or “6” preceding the current test code. The Department will accept computer delivered passing test scores for licensure.

<sup>2</sup>Note: An ACT composite score of 22 or a SAT combined verbal and math score of 1030 may be used in lieu of Praxis 1 PPST Exams or Core Academic Skills for Educators in reading, writing and math by prospective teachers in Louisiana

Pre-Professional Skills Test “Paper or Computer Administrations”	Test #	Score	Effective Date
PPST:R – Pre-Professional Skills Test: Reading	0710/5710	176	Effective 7/1/10
PPST:W – Pre-Professional Skills Test: Writing	0720/5720	175	to 12/31/13
PST:M – Pre-Professional Skills Test: Mathematics	0730/5730	175	

Core Academic Skills for Educators	Test #	Score	Effective Date
Reading	5712	156	Effective 1/1/14
Writing	5722	162	
Mathematics	5732	150	

## 2. Principles of Learning and Teaching (PLT) Exams

Principles of Learning and Teaching : Early Childhood	0621 or 5621	157	Effective 1/1/12
Principles of Learning and Teaching: K-6	0622 or 5622	160	
Principles of Learning and Teaching: 5-9	0623 or 5623	160	
Principles of Learning and Teaching: 7-12	0624 or 5624	157	

## B. Content and Pedagogy Requirements

Certification Area	Name of Praxis Test	Content Exam Score	Pedagogy: Principles of Learning & Teaching		
			PLT K-6 (#0622 or 5622)	PLT 5-9 (#0623 or 5623)	PLT 7-12 (#0624 or 5624)
Early Childhood PK-3	Elementary Content Knowledge (0014 or 5014)	150	PLT: Early Childhood 0621 or 5621 (Score 157)		
Grades 1-5	Elementary Content Knowledge (0014 or 5014)	150	160	---	---
Grades 4-8 Mathematics	Middle School Mathematics (0069) Prior to 1/1/14	148	---	160	---
	Middle School Mathematics (5169) Effective 1/1/14	165			
Grades 4-8 Science	Middle School Science (0439)	150	---	160	---
Grades 4-8 Social Studies	Middle School Social Studies (0089 or 5089)	149	---	160	---
Grades 4-8 English/ Language Arts	Middle School English/Language Arts (0049 or 5049) Prior to 1/1/14	160	---	160	---
	Middle School English (5047) Effective 1/1/14	164			

## C. Certification Areas

### 1. Grades 6-12 Certification

Grades 6-12 Certification Areas					
		Score			PLT 7-12
Agriculture	Agriculture (0700)	510	---		157
Biology	Biology: Content Knowledge (0235 or 5235)	150	---		157
Business	Business Education: Content Knowledge (0101 or 5101)	154	---		157
Chemistry	Chemistry: Content Knowledge (0245 or 5245)	151	---		157
Chinese	Chinese (Mandarin): World Language (5665)	164	PLT7-12 (Score 157) until 6/30/13; After 6/30/13 World Languages Pedagogy 0841 (Score 158)		
Environmental Science	Environmental Education (0831)	156	---		157
English	English Language, Literature, and Composition: Content Knowledge (0041 or				

Grades 6-12 Certification Areas					
		Score			PLT 7-12
	5041) Pedagogy (0043) English Language Arts: Content and Analysis (5039) Effective 1/1/14	160 130 168	---		157
Family & Consumer Sciences	Family and Consumer Sciences (0121 or 5121)	141	---		157
French	French: World Language (5174)	157			PLT7-12 (Score 157) until 6/30/13; After 6/30/13 World Languages Pedagogy 0841 (Score 158)
General Science	General Science: Content Knowledge (0435 or 5435)	156	---		157
German	German: World Language (5183)	157			PLT7-12 (Score 157) until 6/30/13; After 6/30/13 World Languages Pedagogy 0841 (Score 158)
Mathematics	Mathematics: Content Knowledge (0061 or 5061) Effective 6/1/10 – 12/31/13	135	---	-	157
	Mathematics: Content Knowledge (5161) Effective 1/1/14	160		-	
Physics	Physics: Content Knowledge (0265 or 5265)	141	---	-	157
Social Studies	Social Studies: Content and Interpretation (0086 or 5086)	160	---	-	157
Spanish	Spanish: World Language (5195)	157			PLT7-12 (Score 157) until 6/30/13; After 6/30/13 World Languages Pedagogy 0841 (Score 158)
Speech	Speech Communications (0221)	146	---		157
Technology Education	Technology Education (0051)	159	---		157
Computer Science Earth Science Journalism Latin Marketing	At this time, a content area exam is not required for certification in Louisiana.	---	---		157

## 2. All-Level K-12 Certification

All-Level K-12 Certification Areas							
		Score	PLT K-6		PLT 5-9		PLT 7-12
Grades K-12 Art	Art: Content Knowledge (0134 or 5134)	159	160	or	160	or	157
Grades K-12 Dance	None Available**	---	160		160	or	157
Grades K-12 Foreign Languages	Chinese (Mandarin): World Language (5665)	164	PLT K-6 (Score 160) or PLT 5-9 (Score 160)				
	French: World Language (5174)	157	or				
	German: World Language (5183)	157	PL7-12 (Score 157) until 6/30/13;				
	Spanish: World Language (5195)	157	After 6/30/13 World Languages Pedagogy 0841 (Score 158)				
Grades K-12 Music	Music: Content Knowledge (0113 or 5113)	151	160		160	or	157
Grades K-12 Health and Physical Education	Phys. Education: Content Knowledge (0091 or 5091) Effective 6/1/04	146	160	or	160	or	157

\*\*At this time, a content area exam is not required for certification in Louisiana.

## D. Special Education Areas

Area	Content Exam	Score	Pedagogy Requirement	Score
All Special Education Area(s)				
Early Interventionist	Elementary Content Knowledge (0014 or 5014)	150	Special Education: Core Knowledge and Applications (0354 or 5354) and Principles of Learning and Teaching: Early Childhood (0621 or 5621) Effective 1/1/12	145 157
			Special Education: Early Childhood (0691) and Principles of Learning and Teaching: Early Childhood (0621 or 5621) Effective 1/1/14	159 157
Hearing Impaired	Elementary Content Knowledge (0014 or 5014)	150	Special Education: Core Knowledge and Applications (0354 or 5354) and Education of Deaf and Hard of Hearing Students (0271) Effective 11/1/11	145 160
			Special Education: Core Knowledge and Applications (0354 or 5354) and Special Education: Education of Deaf and Hard of Hearing Students (0272 or 5272) Effective 1/1/14	145 160

Area	Content Exam	Score	Pedagogy Requirement	Score
Mild to Moderate Disabilities	ALL Candidates must pass a content area exam appropriate to certification level 1-5, 4-8, 6-12 (e.g., 0014, or core subject-specific exams for middle or secondary grades)		Special Education: Core Knowledge and Mild to Moderate Applications (0543 or 5543)	153
Significant Disabilities	Elementary Content Knowledge (0014 or 5014)	150	Special Education: Core Knowledge and Severe to Profound Applications (0545 or 5545)	153
Visual Impairments/Blind	Elementary Content Knowledge (0014 or 5014)	150	Special Education: Core Content Knowledge and Applications (0354 or 5354) Effective 11/1/11 Special Education: Core Content Knowledge and Applications (0354 or 5354) and Special Education: Teaching Students with Visual Impairments (0282) Effective 1/1/14	145 145 163

E. Administrative and Instructional Support Areas

Certification Area	Name of Praxis Test	Area Test Score
Educational Leader—Level 1	School Leaders Licensure Assessment (1011 or 6011)	166
Educational Leader—Level 3	School Superintendent Assessment (6021)	160
Guidance Counselor K-12	Professional School Counselor (0421 or 5421)	156
School Librarian	Library Media Specialist (0311 or 5311)	136

All Praxis scores used for certification must be sent directly from ETS to the State Department of Education electronically, or the original Praxis score report from ETS must be submitted with candidate's application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1833 (October 2006), amended LR 36:485 and 488 (March 2010), LR 36:2265 (October 2010), LR 37:551 (February 2011), repromulgated LR 37:556 (February 2011), amended LR 37:3210 (November 2011), LR 40:

**Chapter 3. Teaching Authorizations and Certifications**

**Subchapter A. Standard Teaching Authorizations**

**§305. Professional Level Certificates**

A. - A.1.a.i.(b). ...

(c). present appropriate scores on the NTE core battery (common exams) or the corresponding Praxis exams (Core Academic Skills for Educators in reading, writing, and Mathematics); the Principles of Learning and Teaching (PLT) or other pedagogy exam required for the area(s) of certification; and the specialty area exam in the certification area in which the teacher preparation program was completed or in which the initial certificate was issued; and

a.i.(d). - b.i.(d). ...

(i). present appropriate scores on the NTE core battery (common exams) or the corresponding Praxis exams (Core Academic Skills for Educators in reading, writing, and mathematics); the Principles of Learning and Teaching (PLT) or other pedagogy exam required for the area(s) of certification; and the specialty area exam in the certification area in which the teacher preparation program was completed or in which the initial certificate was issued;

b.i.(d)(ii). - d.i.(b). ...

(c). present appropriate scores on the NTE core battery (common exams) or the corresponding Praxis

exams (Core Academic Skills for Educators in reading, writing, and mathematics); the Principles of Learning and Teaching (PLT) or other pedagogy exam required for the area(s) of certification; and the specialty area exam(s) in the certification area(s) in which the teacher preparation program was completed or in which the initial certificate was issued.

B. - E.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), (11), and (15), R.S. 17:7(6), R.S. 17:10, R.S. 17:22(6), R.S. 17:391.1-391.10, and R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1797 (October 2006), amended LR 33: 433 (March 2007), LR 34:233 (February 2008), LR 34:1611 (August 2008), LR 35:222 (February 2009), LR 37:558 (February 2011), LR 38:1951 (August 2012), LR 40:

**§309. Out-of-State (OS) Certificate**

A. - C.1. ...

a. present appropriate scores on the NTE core battery (common exams) or the corresponding Praxis exams (Core Academic Skills for Educators in Reading, Writing, and Mathematics); the Principles of Learning and Teaching (PLT) or other pedagogy exam required for the area(s) of certification; and the specialty area exam in the certification area in which the teacher preparation program was completed or in which the initial certificate was issued;

b. - c. iii. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S.

17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1799 (October 2006), amended LR 33:433 (March 2007), LR 34:1611 (August 2008), LR 35:222 (February 2009), LR 35:894 (May 2009), LR 37:559 (February 2011), LR 37:882 (March 2011), LR 40:

**§311. World Language Certificate (WLC) PK-12**

A. - D. ...

E. Professional Certificate. A professional level 1 certificate may be issued after successful completion of the PRAXIS Core Academic Skills for Educators, PRAXIS II content area examination(s), and PRAXIS Principles of Learning and Teaching: K-6, 5-9, or 7-12. The Test of English as a Foreign Language may be used in lieu of the PRAXIS Core Academic Skills for Educators. For renewal and reinstatement guidelines of a Level 1 certificate see Chapter 3.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), and (15), R.S. 17:7(6), R.S. 17:10, R.S.

17:22(6), R.S. 17:391.1-391.10, and R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1800 (October 2006), amended LR 33:1618 (August 2007), LR 34:233 (February 2008), LR 35:642 (April 2009), LR 36:486 (March 2010), LR 38:1952 (August 2012), LR 40:

### §313. Practitioner Licenses

A. - B.1.b. ...

c. passing scores on Praxis Core Academic Skills for Educators and current Praxis content area exam(s). If no examination has been adopted for Louisiana in the certification area, candidates must present a minimum of 31 semester hours of coursework specific to the content area for admission to the program. Candidates possessing a graduate degree from a regionally accredited college or university will be exempted from the Core Academic Skills for Educators requirement.

NOTE: Special education mild/moderate certification candidates must qualify for admission to alternate programs by passing a Praxis specialty area exam. Secondary education candidates (grades 6-12) must pass a Praxis core subject area exam. If there is no content Praxis exam adopted by the State in the specific secondary core subject area, candidates must demonstrate content mastery by presenting 31 semester credit hours in the core subject area.

2. - 4. ...

C. Practitioner License 2—issued to a candidate who is admitted to and enrolled in a state-approved Non-Master's/Certification-Only Alternate Certification Program

1. - 1.b. ...

c. passing scores on Praxis Core Academic Skills for Educators and current Praxis content area exam(s). If no examination has been adopted for Louisiana in the certification area, candidates must present a minimum of 31 semester hours of coursework specific to the content area for admission to the program. Candidates possessing a graduate degree from a regionally accredited college or university will be exempted from the Core Academic Skills for Educators requirement.

NOTE: Special education mild/moderate certification candidates must qualify for admission to alternate programs by passing a Praxis specialty area exam. Secondary education candidates (grades 6-12) must pass a Praxis core subject area exam. If no examination has been adopted for Louisiana in the certification area, candidates must present a minimum of 31 semester hours of coursework specific to the content area.

2. - 4. ...

D. Practitioner License 3—issued to a candidate who is admitted to and enrolled in a state-approved Master's Degree Alternate Certification Program.

1. - 1.b. ...

c. passing scores on Praxis Core Academic Skills for Educators and current Praxis content area exam(s). If no examination has been adopted for Louisiana in the certification area, candidates must present a minimum of 31 semester hours of coursework specific to the content area for admission to the program. Candidates possessing a graduate degree from a regionally accredited college or university will be exempted from the Core Academic Skills for Educators requirement.

NOTE: Special education mild/moderate certification candidates must qualify for admission to alternate programs by passing a Praxis specialty area exam. Secondary education candidates (grades 6-12) must pass a Praxis core

subject area exam. If no examination has been adopted for Louisiana in the certification area, candidates must present a minimum of 31 semester hours of coursework specific to the content area.

2. - 4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), and (15), R.S. 17:7(6), R.S. 17:10, R.S.

17:22(6), R.S. 17:391.1-391.10, and R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1800 (October 2006), amended LR 35:221 (February 2009), LR 38:1952 (August 2012), LR 40:

### Subchapter B. Nonstandard Teaching Authorizations

#### §323. Temporary Authority to Teach (TAT)

A. ...

B. An applicant must have a baccalaureate degree from a regionally accredited institution; passing scores on the Praxis Core Academic Skills for Educators in Reading and Writing examinations or appropriate scores on the ACT or SAT and at least a 2.20 GPA. Applicants who meet these eligibility requirements can apply for a TAT through their employing school district.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), (11), and (15), R.S. 17:7(6), R.S. 17:10, R.S.

17:22(6), R.S. 17:391.1-391.10, and R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1803 (October 2006), amended LR 36:2547 (November 2010), LR 40:

#### §348. Math for Professionals Certificate

A. - B.1.a.ii. ...

iii. successful passing of the Praxis Mathematics: Content Knowledge test (5161).

1.b. - 3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), (11), and (15), R.S. 17:7(6), R.S. 17:10, R.S. 17:22(6), R.S. 17:391.1-391.10, and R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:220 (February 2009), LR 40:

### Chapter 6. Endorsements to Existing Certificates

#### Subchapter B. Special Education Level and Area Endorsements

#### §625. Requirements to add Early Interventionist Birth to Five Years

A. Individuals holding a valid early childhood certificate (e.g., PK-K, PK-3), elementary certificate (e.g., 1-4, 1-5, 1-6, 1-8), upper elementary or middle school certificate (e.g., 4-8, 5-8, 6-8), secondary certificate (e.g., 6-12, 7-12, 9-12), special education certificate, or an all-level K-12 certificate (art, dance, foreign language, health, physical education, health and physical education, and music) must achieve the following:

1. passing score for Praxis exams: Principles of Learning and Teaching; Early Childhood (#0621 or 5621) and Special Education: Early Childhood (#0691);

2. - 3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), (11), and (15), R.S. 17:7(6), R.S. 17:10, R.S.

17:22(6), R.S. 17:391.1-391.10, and R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1817 (October 2006), amended LR 37:552 (February 2011), amended LR 37:1382 (May 2011), LR 37:3215 (November 2011), LR 40:

**§627. Requirements to add Hearing Impaired K-12**

A. - C.3. ...

D. Passing score for Praxis exams: Special Education: Core Content Knowledge and Applications (#0354 or 5354) Special Education: Education of Deaf and Hard of Hearing (#0272).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), (11), and (15), R.S. 17:7(6), R.S. 17:10, R.S.

17:22(6), R.S. 17:391.1-391.10, and R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1817 (October 2006), amended LR 37:552 (February 2011), LR 40:

**§633. Requirements to add Visual Impairments/Blind K-12**

A. - A.2. ...

3. a passing score for Praxis Special Education: Core Knowledge and Applications (#0354 or 5354) and Special Education: Teaching Students with Visual Impairments (#0282).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), (11), and (15), R.S. 17:7(6), R.S. 17:10, R.S.

17:22(6), R.S. 17:391.1-391.10, and R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1818 (October 2006), amended LR 37:556 (February 2011), LR 40:

**§648. Algebra I**

A. - A.2.c. ...

3. Pass the Praxis Middle School Mathematics exam (5169).

4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), (11), and (15), R.S. 17:7(6), R.S. 17:10, R.S.

17:22(6), R.S. 17:391.1-391.10, and R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:1386 (July 2008), LR 40:

**Family Impact Statement**

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? No.

**Poverty Impact Statement**

In accordance with Section 973 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Poverty Impact Statement on the Rule proposed for adoption, amendment, or repeal. All Poverty Impact

Statements shall be in writing and kept on file in the state agency which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records. For the purposes of this Section, the word “poverty” means living at or below one hundred percent of the federal poverty line.

1. Will the proposed Rule affect the household income, assets, and financial security? No.

2. Will the proposed Rule affect early childhood development and preschool through postsecondary education development? No.

3. Will the proposed Rule affect employment and workforce development? No.

4. Will the proposed Rule affect taxes and tax credits? No.

5. Will the proposed Rule affect child and dependent care, housing, health care, nutrition, transportation, and utilities assistance? Yes.

**Small Business Statement**

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses

**Public Comments**

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., December 9, 2013, to Heather Cope, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Heather Cope  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

**RULE TITLE: Bulletin 746—Louisiana Standards for State Certification of School Personnel**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed policy will allow the adoption of the following Praxis exams: Special Education: Early Childhood (0691); Special Education: Teaching Students with Visual Impairments (0282); Special Education: Education of Deaf and Hard of Hearing (0272); Environmental Education (0831); Core Academic Skills for Educators: Reading (5712), Writing (5722) and Mathematics (5732); Middle School English (5047); Middle School Mathematics (5169); English Language Arts: Content and Analysis (5039); and Mathematics: Content Knowledge (5161), in addition to setting a passing score for the current Professional School Counselor (0421 or 5421) exam previously adopted. The Core Academic Skills for Educators in Reading, Writing and Mathematics, and the new content exams for middle/secondary education in English and mathematics are aligned with the Common Core State Standards.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

This policy will have no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There will be no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This policy will have no effect on competition and employment.

Beth Scioneaux  
Deputy Superintendent  
1311#039

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Environmental Quality  
Office of the Secretary  
Legal Division**

Expanded Definition of Byproduct Material  
(LAC 33:XV.102, 304, 322, 324, 328, 399, 460, 465, 499, 717, 729, 731, 732, 735, and 1302)(RP055ft)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Radiation Protection regulations, LAC 33:XV.102, 304, 322, 324, 328, 399, 460, 465, 499, 717, 729, 731, 732, 735, and 1302 (Log #RP055ft).

This Rule is identical to federal regulations found in 10 CFR 20, 30, 31, 32, 35, 61 and 150, which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 219-3985 or P.O. Box 4302, Baton Rouge, LA 70821-4302. No fiscal or economic impact will result from the Rule. This Rule will be promulgated in accordance with the procedures in R.S. 49:953(F)(3) and (4).

This Rule will update the state regulations to be compatible with changes in the federal regulations. This rule updates and adds several definitions to coincide with amendments in the federal regulations relating to requirements for the expanded definition of byproduct material. The changes in the state regulations are category B and C (must do) requirements for the state of Louisiana to remain an NRC agreement state. The basis and rationale for this Rule is to mirror the federal regulations and maintain an adequate agreement state program. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

**Title 33  
ENVIRONMENTAL QUALITY  
Part XV. Radiation Protection**

**Chapter 1. General Provisions**

**§102. Definitions and Abbreviations**

As used in these regulations, these terms have the definitions set forth below. Additional definitions used only in a certain Chapter may be found in that Chapter.

\*\*\*

*Accelerator-Produced Material*—Repealed.

*Accelerator-Produced Radioactive Material*—any material made radioactive by a particle accelerator.

\*\*\*

*Byproduct Material*—

1. any radioactive material, except special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material;

2. the tailings or wastes produced by the extraction or concentration of uranium or thorium (R.S. 30:2103) from ore processed primarily for its source material content, including discrete surface wastes resulting from uranium or thorium solution extraction processes. Underground ore bodies depleted by these solution extraction operations do not constitute byproduct material within this definition;

3. any discrete source of radium-226 that is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; or

4. any material that has been made radioactive by use of a particle accelerator, and is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; and

5. any discrete source of naturally occurring radioactive material, other than source material that the commission, in consultation with the administrator of the Environmental Protection Agency, the secretary of Energy, the secretary of Homeland Security, and the head of any other appropriate federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security; and before, on, or after August 8, 2005, is extracted or converted after extraction for the use in a commercial, medical, or research activity.

\*\*\*

*Consortium*—an association of medical use licensees and a *positron emission tomography (PET) radionuclide production facility* as defined in this Section located in the same geographical area. They shall jointly own or share in the operation and maintenance cost of the PET radionuclide production facility that produces PET radionuclides for use in producing radioactive drugs within the consortium for noncommercial distributions among its associated members for *medical use* as defined in this Section. The PET radionuclide production facility within the consortium shall be located at an educational institution, a federal facility, or a medical facility.

\*\*\*

*Discrete Source*—a radionuclide that has been processed so that its concentration within a material has been purposely increased for use for commercial, medical or research activities.

\*\*\*

*Particle Accelerator*—any machine capable of accelerating electrons, protons, deuterons or other charged particles in a vacuum and of discharging the resultant particulate or other radiation into a medium at energies usually in excess of 1 megaelectron volt.

\*\*\*

*Positron Emission Tomography (PET) Radionuclide Production Facility*—a facility operating a cyclotron or accelerator for the purpose of producing PET radionuclides.

\* \* \*

*Waste*—those low-level radioactive wastes that are acceptable for disposal in a land disposal facility. For the purposes of this definition, low-level waste has the same meaning as in the Low-Level Radioactive Waste Policy Act, P.L. 96-573, as amended by P.L. 99-240, effective January 15, 1986; that is, radioactive waste:

1. not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or byproduct material as defined in section 11.e.(2) of the Atomic Energy Act (uranium or thorium tailings and waste) and in the definition of *byproduct material* of this Section; and

2. ...

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and 2104(B)1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), LR 19:1421 (November 1993), LR 20:650 (June 1994), LR 22:967 (October 1996), LR 24:2089 (November 1998), repromulgated LR 24:2242 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2563 (November 2000), LR 26:2767 (December 2000), LR 30:1171, 1188 (June 2004), amended by the Office of Environmental Assessment, LR 31:44 (January 2005), LR 31:1064 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:811 (May 2006), LR 32:1853 (October 2006), LR 33:1016 (June 2007), LR 33:2175 (October 2007), LR 34:982 (June 2008), LR 36:1771 (August 2010), amended by the Office of the Secretary, Legal Division, LR 38:2748 (November 2012), LR 40:

### **Chapter 3. Licensing of Radioactive Material**

#### **Subchapter A. Exemptions**

##### **§304. Radioactive Material Other Than Source Material**

A. - B.1. ...

2. Any person who possesses byproduct material received or acquired before September 25, 1971, under the general license, formerly provided in Section B.22, or under a similar general license is exempt from the requirements for a license set forth in this Chapter to the extent that such person possesses, uses, transfers, or owns such byproduct material. This exemption does not apply for radium-226.

3. - 4. ...

C. Exempt Items

1. Certain Items Containing Byproduct Material. Authority to transfer possession or control by the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing byproduct material whose subsequent possession, use, transfer, and disposal by all other persons are exempted from regulatory requirements may be obtained only from the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Except for persons who apply radioactive material to, or persons who incorporate radioactive material into, the following products, any person is exempt from these regulations to the extent that he or she receives, possesses, uses, transfers, owns, or acquires the following products.

a. - a.vii.(c). ...

viii. 1 microcurie (0.037 MBq) of radium-226 per timepiece in intact timepieces manufactured prior to November 30, 2007.

1.b. - 2.b. ...

3. Gas and Aerosol Detectors Containing Byproduct Material

a. Except for persons who manufacture, process, produce, or initially transfer for sale or distribution gas and aerosol detectors containing byproduct material, any person is exempt from the requirements for a license in these regulations to the extent that such person receives, possesses, uses, transfers, owns, or acquires byproduct material in gas and aerosol detectors designed to protect health, safety, or property and manufactured, processed, produced, or initially transferred in accordance with a specific license issued under 10 CFR 32.26, which license authorizes the initial transfer of the product for use under this Section. This exemption also covers gas and aerosol detectors manufactured or distributed before November 30, 2007, in accordance with a specific license issued by a state under comparable provisions to 10 CFR 32.26 authorizing distribution to persons exempt from regulatory requirements.

b. Any person who desires to manufacture, process, or produce gas and aerosol detectors containing byproduct material, or to initially transfer such products for use under LAC 33:XV.304.C.3.a shall apply for a license under 10 CFR 32.26 and for a certificate of registration in accordance with 10 CFR 32.210.

3.c. - 4.d. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and 2104(B)1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), LR 24:2091 (November 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:1226 (August 2001), amended by the Office of the Secretary, Legal Division, LR 38:2746 (November 2012), LR 40

#### **Subchapter C. General Licenses**

##### **§322. General Licenses: Radioactive Material Other Than Source Material**

A. - A.2. ...

B. Antiquities, Timepieces, and Luminous Devices

1. A general license is hereby issued to any person to acquire, receive, possess, use, or transfer, in accordance with the provisions of Paragraphs B.1-4 of this Section, radium-226 contained in the following products manufactured prior to November 30, 2007:

a. Antiquities Originally Intended for Use by the General Public. For the purposes of this Paragraph, antiquities are products originally intended for use by the general public and distributed in the late nineteenth and twentieth centuries, (e.g., radium emanator jars, revigators, radium water jars, radon generators, refrigerator cards, radium bath salts, and healing pads);

b. intact timepieces containing greater than 0.037 megabecquerel (1 microcurie), nonintact timepieces, and timepiece hands and dials no longer installed in timepieces;

c. luminous items installed in air, marine, or land vehicles;

d. all other luminous products, provided that no more than 100 items are used or stored at the same location at any one time; and

e. small radium sources containing no more than 0.037 megabecquerel (1 microcurie) of radium-226. [For the purposes of this Paragraph, small radium sources are: discrete survey instrument check sources, sources contained in radiation measuring instruments, sources used in educational demonstrations (e.g., cloud chambers and spinthariscopes), electron tubes, lightning rods, ionization sources, static eliminators, or as designated by the NRC.]

2. Persons who acquire, receive, possess, use, or transfer byproduct material under the general license issued under Paragraph B.1 of this Section are exempt from the provisions of LAC 33:XV.Chapters 3, 4, and 10, and specifically LAC 33:XV.341 and 342 to the extent that the receipt, possession, use, or transfer of byproduct material is within the terms of the general license; provided, however, that this exemption shall not be deemed to apply to any such person specifically licensed under this Chapter.

3. Any person who acquires, receives, possesses, uses, or transfers byproduct material in accordance with the general license in Paragraph B.1 of this Section shall:

a. notify the Office of Environmental Compliance within 30 days of possible damage to the product which may result in a loss of the radioactive material, including a brief description of the event and the remedial action taken;

b. not abandon products containing radium-226. The product, and any radioactive material from the product, may only be disposed of according to LAC 33:XV.499, Appendix D or by transfer to a person authorized by a specific license to receive the radium-226 in the product or as otherwise approved by another agreement state or the NRC;

c. not export products containing radium-226, except in accordance with 10 CFR 110;

d. dispose of products containing radium-226 at a disposal facility authorized to dispose of radioactive material in accordance with any federal or state solid or hazardous waste law. This includes the Solid Waste Disposal Act, as authorized under the Energy Policy Act of 2005, by transfer to a person authorized to receive radium-226 by a specific license issued under LAC 33:XV.Chapter 3 of these regulations, equivalent regulations of an agreement state, or as approved by the NRC; and

e. respond to written requests from the department to provide information relating to the general license within 30 calendar days of the date of the request, or the time specified in the request. If the general licensee cannot provide the requested information within the allotted time, it shall, within that same time period, request additional time to supply the information by providing the department with a written justification for the request.

4. The general license in Paragraph B.1 of this Section does not authorize the manufacture, assembly, disassembly, repair, or import of products containing radium-226, except that timepieces may be disassembled and repaired.

C. Reserved.

#### D. Certain Detecting, Measuring, Gauging, and Controlling Devices

1. A general license is hereby issued to commercial and industrial firms and to research, educational, and medical institutions, individuals in the conduct of their business, and federal, state, or local government agencies to own, receive, acquire, possess, use, or transfer in accordance with the provisions of Paragraph D.2 of this Section, byproduct material contained in devices designed and manufactured for the purpose of detecting, measuring, gauging, or controlling thickness, density, level, interface location, radiation, leakage, or qualitative or quantitative chemical composition, or for producing light or an ionized atmosphere.

2. The general license in Paragraph D.1 of this Section applies only to byproduct material contained in devices that have been manufactured or initially transferred and labeled in accordance with the specifications contained in a specific license issued by the administrative authority in accordance with LAC 33:XV.328.D or in accordance with the specifications contained in a specific license issued by the U.S. Nuclear Regulatory Commission, any other agreement state, or a licensing state that authorizes distribution of devices to persons generally licensed by the U.S. Nuclear Regulatory Commission, an agreement state, or a licensing state. Regulations under the Federal Food, Drug, and Cosmetic Act authorizing the use of radioactive control devices in food production require certain additional labeling thereon that is found in 21 CFR 179.21. The devices shall be received from one of the specific licensees described in this Paragraph or through a transfer made under Subparagraph D.3.h of this Section.

3. Any person who owns, receives, acquires, possesses, uses, or transfers byproduct material in a device pursuant to the general license in Paragraph D.1 of this Section shall do the following:

a. - b.ii. ...

c. assure that the tests required by Subparagraph D.3.b of this Section and other testing, installation, servicing, and removal from installation involving the radioactive material, its shielding, or containment are performed:

i. - ii. ...

d. maintain records showing compliance with the requirements of Subparagraphs D.3.b and c of this Section. The records shall show the results of tests. The records also shall show the dates of performance of, and the names of persons performing, testing, installation, servicing, and removal from installation of the radioactive material, its shielding, or containment. Records of tests for leakage of radioactive material required by Subparagraph D.3.b of this Section shall be retained for three years after the next required leak test is performed, or until the sealed source is transferred or disposed. Records of tests of the on-off mechanism and indicator required by Subparagraph D.3.b of this Section shall be maintained for three years after the next required test of the on-off mechanism and indicator is performed or until the sealed source is transferred or

disposed. Records required by Subparagraph D.3.c of this Section shall be maintained for a period of three years from the date of the recorded event or until the device is transferred or disposed;

e. upon the occurrence of a failure of or damage to, or any indication of a possible failure of or damage to, the shielding of the radioactive material or the on-off mechanism or indicator, or upon the detection of 0.005 microcurie (185 bequerel) or more of removable radioactive material, immediately suspend operation of the device until it has been repaired by the manufacturer or other person holding an applicable specific license from the administrative authority, the U.S. Nuclear Regulatory Commission, or any other agreement state or licensing state to repair such devices, or disposed of by transfer to a person authorized by an applicable specific license to receive the radioactive material contained in the device and, within 30 days, furnish to the Office of Environmental Compliance a report containing a brief description of the event and the remedial action taken. In the case of detection of 0.005 microcurie or more of removable radioactive material or failure of or damage to a source likely to result in contamination of the premises or environs, a plan for ensuring that the premises and environs are acceptable for unrestricted use in accordance with LAC 33:XV.332.D shall be submitted to the Office of Environmental Compliance within 30 days of occurrence;

f. shall not abandon the device containing byproduct material;

g. except as provided in Subparagraph D.3.h of this Section, transfer or dispose of the device containing byproduct material only by export as provided in 10 CFR Part 110 or by transfer to a specific licensee of the department, the U.S. Nuclear Regulatory Commission, or any other agreement state or licensing state whose specific license authorizes him or her to receive the device and, within 30 days after transfer of a device to a specific licensee, except when the device is transferred to the specific licensee in order to obtain a replacement device, shall furnish to the Office of Environmental Compliance a report containing:

g.i. - k. ...

l. register, in accordance with the provisions in this Subparagraph, devices containing at least 370 MBq (10 mCi) of cesium-137, 3.7 MBq (0.1 mCi) of strontium-90, 37 MBq (1 mCi) of cobalt-60, 3.7 megabecquerels (0.1 millicurie) of radium-226, or 37 MBq (1 mCi) of americium-241 or any other transuranic (i.e., element with atomic number greater than uranium (92)), based on the activity indicated on the label. Each address for a location of use, as described in this Subparagraph, represents a separate general licensee and requires a separate registration and fee:

D.3.l.i. - J.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and 2104(B)1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2567 (November 2000), LR 27:1226 (August 2001), LR 30:1663

(August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2524 (October 2005), LR 32:811 (May 2006), LR 33:448 (March 2007), LR 33:2177 (October 2007), amended by the Office of the Secretary, Legal Division, LR 40:

#### **Subchapter D. Specific Licenses**

#### **§324. Filing Application for Specific Licenses**

A. - C. ...

D. An application for a license may include a request for a license authorizing one or more activities.

1. An application from a medical facility, educational institution, or a federal facility to produce positron emission tomography (PET) radioactive drugs for noncommercial transfer to licensees in its consortium authorized for medical use under Chapter 7 or the equivalent regulations in 10 CFR 35 of the U.S. Nuclear Regulatory Commission requirements shall include:

a. a request authorizing the production of PET radionuclides, or evidence of an existing license issued under LAC 33:XV.324 or 10 CFR 30 of the U.S. Nuclear Regulatory Commission requirements for a PET radionuclide production facility within its consortium from which it receives PET radionuclides;

b. evidence that the applicant is qualified to produce radioactive drugs for medical use by meeting one of the criteria in LAC 33:XV.328.J or 10 CFR 32.72(a)(2);

c. identification of the individual(s) authorized to prepare the PET radioactive drugs if the applicant is a pharmacy, and documentation that each individual meets the requirements of an authorized nuclear pharmacist as specified in LAC 33:XV.763.K or 10 CFR 32.72(b)(2); and

d. information submitted to members of its consortium for noncommercially transferred PET drugs on the radionuclide; the chemical and physical form; the maximum activity per vial, syringe, generator, or other container of the radioactive drug; and the shielding provided by the packaging to show it is appropriate for the safe handling and the storage of the radioactive drugs by medical use licensees.

2. Except as provided in Paragraphs D.3, 4, and 5 of this Section, an application for a specific license to use byproduct material in the form of a sealed source or in a device that contains the sealed source shall:

a. identify the source or device by manufacturer and model number as registered with the NRC under 10 CFR 32.210, with an agreement state, or for a source or a device containing radium-226 or accelerator-produced radioactive material with a state under provisions comparable to 10 CFR 32.210; or

b. contain the information identified in 10 CFR 32.210(c).

3. For sources or devices manufactured before October 23, 2012, that are not registered with the NRC under 10 CFR 32.210 or with an agreement state, and for which the applicant is unable to provide all categories of information specified in 10 CFR 32.210(c), the application shall include:

a. all available information identified in 10 CFR 32.210(c) concerning the source, and, if applicable, the device; and

b. sufficient additional information to demonstrate that there is reasonable assurance that the radiation safety properties of the source or device are adequate to protect

health and minimize danger to life and property. Such information shall include a description of the source or device, a description of radiation safety features, the intended use and associated operating experience, and the results of a recent leak test.

4. For sealed sources and devices allowed to be distributed without registration of safety information in accordance with 10 CFR 32.210(g)(1), the applicant may supply the manufacturer, model number, radionuclide, and quantity.

5. If it is not feasible to identify each sealed source and device individually, the applicant may propose constraints on the number and type of sealed sources and devices to be used and the conditions under which they will be used, in lieu of identifying each sealed source and device.

E. - K. ...

<sup>1</sup>These reporting requirements do not supersede or release licensees of complying with requirements under the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Pub. L. 99-499 or other state or federal reporting requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and 2104(B)1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), LR 20:179 (February 1994), amended by the Office of the Secretary, LR 22:345 (May 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2567 (November 2000), LR 27:1227 (August 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2525 (October 2005), LR 33:2178 (October 2007), amended by the Office of the Secretary, Legal Division, LR 40

**§328. Special Requirements for Specific License to Manufacture, Assemble, Repair, or Distribute Commodities, Products, or Devices that Contain Radioactive Material**

A. - E.1.b. ...

F. Special Requirements for License to Manufacture or Initially Transfer Calibration or Reference Sources Containing Americium-241 or Radium-226 for Distribution to Persons Generally Licensed under LAC 33:XV.322.G

1. An application for a specific license to manufacture or initially transfer calibration or reference sources containing americium-241 or radium-226, for distribution to persons generally licensed under LAC 33:XV.322.G, will be approved subject to the following conditions:

a. ...

b. the applicant submits sufficient information regarding each type of calibration or reference source pertinent to evaluation of the potential radiation exposure, including:

i. chemical and physical form and maximum quantity of americium-241 or radium-226 in the source;

ii. details of construction and design;

iii. details of the method of incorporation and binding of the americium-241 or radium-226 in the source;

iv. procedures for and results of prototype testing of sources, which are designed to contain more than 0.005 microcurie of americium-241 or radium-226, to demonstrate that the americium-241 or radium-226 contained in each source will not be released or be removed from the source under normal conditions of use;

v. details of quality control procedures to be followed in the manufacture of the source;

vi. description of labeling to be affixed to the source or the storage container for the source; and

vii any additional information, including experimental studies and test, required by the department to facilitate a determination of the safety of the source.

c. Each source shall contain no more than 5 microcuries of americium-241 or radium-226.

d. The department determines, with respect to any type of source containing more than 0.005 microcurie of americium-241 or radium-226, that:

i. the method of incorporation and binding of the americium-241 or radium-226 in the source is such that the americium-241 will not be released or be removed from the source under normal conditions of use and handling of the source; and

ii. the source has been subjected to and has satisfactorily passed appropriate tests required by Subparagraph F.1.e of this Section.

e. The applicant shall subject at least five prototypes of each source that is designed to contain more than 0.185 kilobecquerel (0.005 microcurie) of americium-241 or radium-226 to tests as follows:

i. the initial quantity of radioactive material deposited on each source is measured by direct counting of the source;

ii. the sources are subjected to tests that adequately take into account the individual, aggregate, and cumulative effects of environmental conditions expected in service that could adversely affect the effective containment or binding of americium-241 or radium-226, such as physical handling, moisture, and water immersion;

iii. the sources are inspected for evidence of physical damage and for loss of americium-241 or radium-226, after each stage of testing, using methods of inspection adequate for determining compliance with the criteria in Clause F.1.e.iv of this Section; and

iv. source designs are rejected for which the following has been detected for any unit: removal of more than 0.185 kilobecquerel (0.005 microcurie) of americium-241 or radium-226 from the source or any other evidence of physical damage.

2. Each person licensed to manufacture or initially transfer calibration or reference sources shall affix to each source, or storage container for the source, a label which shall contain sufficient information relative to safe use and storage of the source and shall include the following statement or a substantially similar statement which contains the information called for in the following statement:<sup>1</sup>

a. the receipt, possession, use, and transfer of this source, Model \_\_\_\_, Serial No. \_\_\_\_, are subject to a general license and the regulations of the United States Nuclear Regulatory Commission or of a state with which the Commission has entered into an agreement for the exercise of regulatory authority. Do not remove this label.

CAUTION—RADIOACTIVE MATERIAL—THIS SOURCE CONTAINS AMERICIUM-241 (or RADIUM-226). DO NOT TOUCH RADIOACTIVE PORTION OF THIS SOURCE.

(Name of Manufacturer or Initial Transferor)

3. Each person licensed to manufacturer or initially transfer calibration or reference sources shall perform a dry wipe test upon each source containing more than 3.7 kilobecquerels (0.1 microcurie) of americium-241 or radium-226 before transferring the source to a general licensee under LAC 33:XV.322.G or equivalent regulations of the U. S. Nuclear Regulatory Commission, licensing state or any other agreement state. This test shall be performed by wiping the entire radioactive surface of the source with a filter paper with the application of moderate finger pressure. The radioactivity on the filter paper shall be measured using methods capable of detecting 0.185 kilobecquerel (0.005 microcurie) of americium-241 or radium-226. If a source has been shown to be leaking or losing more than 0.185 kilobecquerel (0.005 microcurie) of americium-241 or radium-226 by the methods described in this Paragraph, the source shall be rejected and shall not be transferred to a general licensee under LAC 33:XV.322.G or equivalent regulations of the U. S. Nuclear Regulatory Commission, licensing state, or any other agreement state.

G. Reserved.

H. Licensing the Manufacture and Distribution of Byproduct Material for Certain In Vitro Clinical or Laboratory Testing under a General License

1. An application for a specific license to manufacture or distribute byproduct material for use under an appropriate general license or equivalent will be approved subject to the following conditions:

a. ...

b. the byproduct material is to be prepared for distribution in prepackaged units of:

i. iodine-125 in units not exceeding 0.37 megabecquerel (10 microcuries) each;

ii. iodine-131 in units not exceeding 0.37 megabecquerel (10 microcuries) each;

iii. carbon-14 in units not exceeding 0.37 megabecquerel (10 microcuries) each;

iv. hydrogen-3 (tritium) in units not exceeding 1.85 megabecquerels (50 microcuries) each;

v. iron-59 in units not exceeding 0.74 megabecquerel (20 microcuries) each;

vi. cobalt-57 in units not exceeding 0.37 megabecquerel (10 microcuries) each;

vii. selenium-75 in units not exceeding 0.37 megabecquerel (10 microcuries) each; or

viii. mock iodine-125 in units not exceeding 1.85 kilobecquerels (0.05 microcurie) of iodine-129 and 0.185 kilobecquerel (0.005 microcurie) of americium-241 each; and

c. ...

i. identifying the radioactive contents as to chemical form and radionuclide, and indicating that the amount of radioactivity does not exceed 0.37 megabecquerel (10 microcuries) of iodine-125, iodine-131, carbon-14, cobalt-57, or selenium-75; 1.85 megabecquerels (50 microcuries) of hydrogen-3 (tritium); or 0.74 megabecquerel (20 microcuries) of iron-59; or mock iodine-125 in units not exceeding 1.85 kilobecquerels (0.05 microcurie) of iodine-129 and 0.185 kilobecquerel (0.005 microcurie) of americium-241 each; and

ii. displaying the radiation caution symbol described in LAC 33:XV.450.A and the words, "CAUTION,

RADIOACTIVE MATERIAL," and "Not for Internal or External Use in Humans or Animals."

H.1.d. - I.1.b. ...

J. Manufacture, Preparation, or Transfer for Commercial Distribution of Radioactive Drugs Containing Byproduct Material for Medical Use under LAC 33:XV.Chapter 7.

1. An application for a specific license to manufacture, prepare, or transfer for commercial distribution radioactive drugs containing byproduct material for use by persons authorized in accordance with LAC 33:XV.Chapter 7 shall be approved if the following conditions are met:

a. - b. ...

i. registered or licensed with the U.S. Food and Drug Administration (FDA) as the owner or operator of a drug establishment that engages in the manufacture, preparation, propagation, compounding, or processing of a drug under 21 CFR 207.20(a);

ii. ...

iii. licensed as a pharmacy by the Louisiana Board of Pharmacy;

iv. operating as a nuclear pharmacy within a federal medical institution; or

v. a positron emission tomography (PET) drug production facility licensed or registered with a state agency.

1.c. - 2....

a. may prepare radioactive drugs for *medical use*, as defined in LAC 33:XV.102, provided that the radioactive drug is prepared by either an authorized nuclear pharmacist, as specified in Subparagraphs J.2.b and d of this Section, or an individual under the supervision of an authorized nuclear pharmacist as specified in LAC 33:XV.709;

b. - b.ii. ...

iii. this individual is designated as an authorized nuclear pharmacist in accordance with Subparagraph J.2.d of this Section;

c. ...

d. may designate a *pharmacist* as defined in LAC 33:XV.102 as an authorized nuclear pharmacist if the individual is identified as of December 2, 1994, as an *authorized user* on a nuclear pharmacy license issued by the department under these regulations if:

i. the individual was a nuclear pharmacist preparing only radioactive drugs containing accelerator-produced radioactive material; and

ii. the individual practiced at a pharmacy at a government agency or a federally recognized Indian tribe before November 30, 2007, or at all other pharmacies before August 8, 2009, or at an earlier date as recognized by the Nuclear Regulatory Commission;

e. shall provide to the Office of Environmental Compliance:

i. a copy of each individual's certification by the Board of Pharmaceutical Specialties with the written attestation signed by a preceptor as required by LAC 33:XV.763.K.2;

ii. the department, Nuclear Regulatory Commission, or agreement state license;

iii. Nuclear Regulatory Commission master materials licensee permit;

iv. the permit issued by a licensee or Nuclear Regulatory Commission master materials permittee of broad scope or the authorization from a commercial nuclear

pharmacy authorized to list its own authorized nuclear pharmacist; or

v. documentation that only accelerator-produced radioactive materials were used in the practice of nuclear pharmacy at a government agency or federally recognized Indian tribe before November 30, 2007, or at all other locations of use before August 8, 2009, or at an earlier date as noticed by the NRC; and

vi. a copy of the state pharmacy licensure or registration, no later than 30 days after the date that the licensee allows the individual to work as an authorized nuclear pharmacist, in accordance with Clauses J.2.b.i and iii of this Section.

J.3. - M.4.g. ...

<sup>1</sup>Calibration and reference sources licensed under LAC 33:XV.322.G before January 19, 1975, may bear labels authorized by the regulations in effect on January 1, 1975.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and 2401(B)1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), LR 24:2092 (November 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2569 (November 2000), LR 26:2768 (December 2000), LR 27:1228 (August 2001), LR 30:1664 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2526 (October 2005), LR 33:2179 (October 2007), LR 36:1771 (August 2010), amended by the Office of the Secretary, Legal Division, LR 38:2746 (November 2012), LR 40:

**Subchapter Z. Appendices**

**§399. Schedules A and B and Appendices A, B, C, D, E, F, and G**

Schedule A - Footnotes to Schedule A:

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NOTE 1. - 4. ...

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Schedule B Exempt Quantities	
Byproduct Material	Microcuries
*** [See Prior Text in Antimony 122 (Sb 122) - Cerium 144(Ce 144)]	
Cesium 129 (Cs 129)	100
*** [See Prior Text in Cesium 134 (Cs 134) - Chromium 51 (Cr 51)]	
Cobalt 57 (Co 57)	100
*** [See Prior Text in Cobalt 58m (Co 58m) - Gallium 72 (Ga 72)]	
Germanium 69 (Ge 69)	10
*** [See Prior Text in Germanium 71 (Ge 71)]	
Gold (Au 195)	10
*** [See Prior Text in Gold 198 (Au 198) - Hydrogen 3 (H 3)]	
Indium 111 (In 111)	100
*** [See Prior Text in Indium 113m (In 113m) - Indium 115 (In 115)]	
Iodine 123 (I 123)	100
*** [See Prior Text in Iodine 125 (I 125) - Iridium 194 (Ir 194)]	

Schedule B Exempt Quantities	
Byproduct Material	Microcuries
Iron 52 (Fe 52)	10
*** [See Prior Text in Iron 55 (Fe 55) - Potassium 42 (K 42)]	
Potassium 43 (K 43)	10
*** [See Prior Text in Praseodymium 142 (Pr 142) - Rhodium 105 (Rh 105)]	
Rubidium 81 (Rb 81)	100
*** [See Prior Text in Rubidium 86 (Rb 86) - Silver 111 (Ag 111)]	
Sodium 22 (Na 22)	10
*** [See Prior Text in Sodium 24 (Na 24) - Ytterbium 175 (Yb 175)]	
Yttrium 87 (Y 87)	10
Yttrium 88 (Y 88)	10
*** [See Prior Text in Yttrium 90 (Y 90) - Zirconium 97 (Zr 97)]	
Any byproduct material not listed above other than alpha-emitting byproduct material.	0.1

Footnotes to Schedule B - Appendix B; E.4. ...

Appendix C Quantities of Radioactive Materials Requiring Consideration of the Need for an Emergency Plan for Responding to a Release		
Radioactive Material <sup>1</sup>	Release Fraction	Quantity (curies)
*** [See Prior Text in Actinium-228 - Promethium-147]		
Radium-226	0.001	100
*** [See Prior Text in Ruthenium-106 - Packaged waste, alpha <sup>2</sup> ]		
Combinations of radioactive materials listed above <sup>1</sup>		

<sup>1</sup>For combinations of radioactive materials, consideration of the need for an emergency plan is required if the sum of the ratios of the quantity of each radioactive material authorized to the quantity listed for that material in Appendix E exceeds one.

<sup>2</sup>Waste packaged in Type B containers does not require an emergency plan.

Appendix D. - Appendix G. ...

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AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and 2104(B)1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), LR 20:180 (February 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2574 (November 2000), LR 27:1228 (August 2001), amended by the Office of Environmental Assessment, LR 31:46 (January 2005), LR 31:1580 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2528 (October 2005), LR 32:820 (May 2006), LR 32:1853 (October 2006), LR 33:449 (March 2007), LR 33:1017 (June 2007), LR 33:2181 (October 2007), amended by the Office of the Secretary, Legal Division, LR 40:

**Chapter 4. Standards for Protection against Radiation**

**Subchapter H. Waste Disposal**  
**§460. General Requirements**

A. - A.3. ...

4. as authorized in accordance with LAC 33:XV.461, 462, 463, or 464.

B. - B.3. ...

4. disposal at a land disposal facility licensed in accordance with LAC 33:XV.Chapters 3, 13, and 14; or

5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and 2104(B)1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 19:1421 (November 1993), amended by the Office of the Secretary, Legal Division, LR 40:

**§465. Transfer for Disposal and Manifests**

A. - D. ...

E. Any licensee shipping byproduct material as defined in LAC 33:XV.102, *byproduct material*, 3, 4, and 5 intended for ultimate disposal at a licensed land disposal facility shall document the information required for the consignee in accordance with the requirements specified in LAC 33:XV.499, Appendix D.

F. Licensed material as defined in LAC 33:XV.102, *byproduct material*, 3, 4, and 5 may be disposed of in accordance with LAC 33:XV.Chapter 13, even though it is

not defined as low level radioactive waste. Therefore, any licensed byproduct material being disposed of at a facility licensed under LAC 33:XV.Chapter 13 shall meet the requirements of Subsections A-E of this Section. A licensee may dispose of *byproduct material*, as defined in LAC 33:XV.102, *byproduct material*, 3, 4, and 5, at a disposal facility authorized to dispose of such material in accordance with any federal or state solid or hazardous waste law, including the Solid Waste Disposal Act, as authorized under the Energy Policy Act of 2005.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and 2104(B)1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 19:1421 (November 1993), amended LR 24:2096 (November 1998), amended by the Office of the Secretary, Legal Division, LR 40:

**Subchapter Z. Appendices**

**§499. Appendices A, B, C, D, E**

Appendix A - Appendix B, Table III "Releases to Sewers"

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Tables I, II, and III								
Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	Monthly Average Concentration ( Ci/ml)
			Oral Ingestion ALI ( Ci)	Inhalation		Air ( Ci/ml)	Water ( Ci/ml)	
			ALI ( Ci)	DAC ( Ci/ml)				
***								
[See Prior Text Atomic No. 1 Hydrogen -3- Atomic No. 6 Carbon 14]								
7	Nitrogen-13 <sup>2</sup>	Submersion <sup>1</sup>	-	-	4E-6	2E-8	-	-
8	Oxygen-15 <sup>2</sup>	Submersion <sup>1</sup>	-	-	4E-6	2E-8	-	-
***								
[See Prior Text in Atomic No. 9 Fluorine-18 <sup>2</sup> Atomic No. 101 Mendelevium-258]								
-	Any single radionuclide not listed above with decay mode other than alpha emission or spontaneous fission and with radioactive half-life less than 2 hours	Submersion <sup>1</sup>	-	2E+2	1E-7	1E-9	-	-
-	Any single radionuclide not listed above with decay mode other than alpha emission or spontaneous fission and with radioactive half-life greater than 2 hours		-	2E-1	1E-10	1E-12	1E-8	1E-7
-	Any single radionuclide not listed above that decays by alpha emission or spontaneous fission, or any mixture for which either the identity or the concentration of any radionuclide in the mixture is not known	-	-	4E-4	2E-13	1E-15	2E-9	2E-8

ENDNOTES: 1. - 3. ...

\* \* \*

NOTE: 1. - 4. ...

\* \* \*

Appendix C. - Appendix E. ...

A. - C. ...

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and 2104(B)1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 19:1421 (November 1993), LR 20:653 (June 1994), LR 22:973 (October 1996), LR 24:2096 (November 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2580 (November 2000), LR 28:1012 (May 2002), amended by the Office of Environmental Assessment, LR 31:48 (January 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2530 (October 2005), LR 33:2183 (October 2007), amended by the Office of the Secretary, Legal Division, LR 40:

## **Chapter 7. Use of Radionuclides in the Healing Arts**

### **§717. Assay of Radiopharmaceutical Dosages**

A. - B.2.a. ...

b. a U.S. Nuclear Regulatory Commission or agreement state licensee, for use in research in accordance with a Radioactive Drug Research Committee-approved protocol or an Investigational New Drug (IND) protocol accepted by FDA; or

c. a PET radioactive drug producer license as specified in LAC 33:XV.324.D, equivalent agreement state requirements or equivalent Nuclear Regulatory Commission requirements.

C. - C.2. ...

3. a combination of volumetric measurements and mathematical calculations, based on the measurement made by:

a. a manufacturer or preparer licensed under LAC 33:XV.328.J or equivalent agreement state requirements; or

b. a PET radioactive drug producer licensed under LAC 33:XV.324.D, equivalent agreement state requirements or Nuclear Regulatory Commission requirements.

D. - E.5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and 2104(B)1.

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### **§729. Use of Radiopharmaceuticals for Uptake, Dilution, or Excretion Studies**

A. - B. ...

C. The radiopharmaceuticals specified in Subsection A of this Section shall be:

1. obtained from a manufacturer or preparer, or a PET radioactive drug producer, licensed in accordance with LAC 33:XV.328.J, equivalent Nuclear Regulatory Commission requirements, or agreement state requirements;

2. - 4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and 2104(B)1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), amended LR 24:2104 (November 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 30:1177 (June 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 34:982 (June 2008), amended by the Office of the Secretary, Legal Division, LR 40:

### **§731. Use of Radiopharmaceuticals, Generators, and Reagent Kits for Imaging and Localization Studies**

A. - F. ...

1. obtained from a manufacturer or preparer, or a PET radioactive drug producer, licensed in accordance with LAC 33:XV.328.K, equivalent Nuclear Regulatory Commission requirements, or agreement state requirements; or

F.2. - H.1. ...

a. obtained from a manufacturer or preparer, or a PET radioactive drug preparer, licensed under LAC 33:XV.328.J, equivalent Nuclear Regulatory Commission requirements, or equivalent agreement state requirements; or

b. - d. ...

I. A licensee may use the authorization under LAC 33:XV.328.K, Nuclear Regulatory Commission, or agreement state requirements to produce positron emission tomography (PET) radioactive drugs for noncommercial transfer to medical use licensees in its consortium. This does not relieve the licensee from complying with applicable FDA, other federal agencies, and agreement state requirements governing radioactive drugs.

J. Each licensee authorized under LAC 33:XV.328.K to produce PET radioactive drugs for noncommercial transfer to medical use licensees in its consortium shall:

1. satisfy the labeling requirements in this Chapter for each PET radioactive drug transport radiation shield and each syringe, vial, or other container used to hold a PET radioactive drug intended for noncommercial distribution to members of its consortium; and

2. possess and use instrumentation to measure the radioactivity of the PET radioactive drugs intended for noncommercial distribution to members of its consortium and meet the procedural, radioactivity measurement, instrument test, instrument check, and instrument adjustment requirements in this Chapter.

K. A licensee that is a pharmacy authorized under LAC 33:XV.328.K to produce PET radioactive drugs for noncommercial transfer to medical use licensees in its consortium shall require that any individual who prepares PET radioactive drugs shall be:

1. an *authorized nuclear pharmacist* as defined in LAC 33:XV.102 and meets the requirements of LAC 33:XV.763.K;

2. a physician who is an *authorized user* as defined in LAC 33:XV.102 and meets the requirements specified in LAC 33:XV.763.D or E; or

3. an individual who was trained under the supervision of an *authorized user* or an *authorized nuclear pharmacist* as specified in LAC 33:XV.709.A or B.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and 2104(B)1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), amended LR 24:2104 (November 1998), amended by the

Office of Environmental Assessment, Environmental Planning Division, LR 26:2589 (November 2000), LR 27:1238 (August 2001), LR 30:1178 (June 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 34:982 (June 2008), amended by the Office of the Secretary, Legal Division, LR 40:

**§732. Permissible Molybdenum-99 Concentration**

A. A licensee shall not administer to humans a radiopharmaceutical containing:

1. more than 0.15 microcurie of molybdenum-99 per millicurie of technetium-99m (0.15 kilobecquerel of molybdenum-99 per megabecquerel of technetium-99m);

2. more than 0.02 kilobecquerel of strontium-82 per megabecquerel of rubidium-82 chloride injection (0.02 microcurie of strontium-82 per millicurie of rubidium-82 chloride); or

3. more than 0.2 kilobecquerel of strontium-85 per megabecquerel of rubidium-82 chloride injection (0.2 microcurie of strontium-85 per millicurie of rubidium-82).

B. A licensee preparing technetium-99m radiopharmaceuticals from molybdenum-99/technetium-99m generators or rubidium-82 from strontium-82/rubidium-82 generators shall measure the molybdenum-99 concentration or the rubidium-82 concentration in each eluate or extract.

C. A licensee who must measure molybdenum concentration shall retain a record of each measurement for three years. The record shall include, for each elution or extraction of technetium-99m, the measured activity of the technetium expressed in millicuries (megabecquerels), the measured activity of molybdenum expressed in microcuries (kilobecquerels), the ratio of the measures expressed as microcuries of molybdenum per millicurie of technetium (kilobecquerels of molybdenum per megabecquerel of technetium), the date of the test, and the initials of the individual who performed the test.

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and 2104(B)1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2589 (November 2000), amended by the Office of the Secretary, Legal Division, LR 40:

**§735. Use of Radiopharmaceuticals for Therapy**

A. - B. ...

1. obtained from a manufacturer, preparer, or a PET radioactive drug producer, licensed in accordance with LAC 33:XV.328.J or equivalent Nuclear Regulatory Commission or agreement state requirements; or

B.2. - C.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and 2104(B)1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), amended LR 24:2104 (November 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 30:1178 (June 2004), amended by the Office of the Secretary, Legal Division, LR 40:

**Chapter 13. Licensing Requirements for Land Disposal of Radioactive Waste**

**Subchapter A. General Provisions**

**§1302. Definitions**

A. As used in this Chapter, the following definitions apply.

\* \* \*

*Waste*—those low-level radioactive wastes containing source, special nuclear, or byproduct material that are acceptable for disposal in a land disposal facility. For the purposes of this definition, low-level radioactive waste has the same meaning as in the Low-Level Radioactive Waste Policy Act, P.L. 96-573, that is radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or byproduct material as defined in section 11.e (2) of the Atomic Energy Act (uranium or thorium tailings and waste) and LAC 33:XV.102, *byproduct material*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and 2104(B)1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 23:1140 (September 1997), amended by the Office of the Secretary, Legal Division, LR 40:

**Family Impact Statement**

This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

**Poverty Impact Statement**

This Rule has no known impact on poverty as described in R.S. 49:973.

**Public Comments**

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by RP055ft. Such comments must be received no later than December 27, 2013, at 4:30 p.m., and should be sent to Deidra Johnson, Attorney Supervisor, Office of the Secretary, Legal Division, P.O. Box 4302, Baton Rouge, LA 70821-4302, or to fax (225) 219-4068, or by e-mail to [deidra.johnson@la.gov](mailto:deidra.johnson@la.gov). The comment period for this Rule ends on the same date as the public hearing. Copies of this proposed regulation can be purchased by contacting the DEQ public records center at (225) 219-3168. Check or money order is required in advance for each copy of RP055ft. This regulation is available on the internet at [www.deq.louisiana.gov/portal/tabid/1669/default.aspx](http://www.deq.louisiana.gov/portal/tabid/1669/default.aspx).

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 North Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

## Public Hearing

A public hearing will be held on December 27, 2013, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 North Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Deidra Johnson at the address given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

Herman Robinson, CPM  
Executive Counsel

1311#025

## NOTICE OF INTENT

### Office of the Governor Board of Examiners of Interior Designers

#### Use of Term (LAC 46:XLIII.1001)

Editor's Note: The following Notice of Intent is being repromulgated to correct an error upon submission. The original Notice of Intent can be viewed in its entirety in the September 20, 2013 edition of the *Louisiana Register* on pages 2550-2552.

Notice is hereby given in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and through the authority granted in R.S. 37:3171 that the Board of Examiners of Interior Designers proposes to amend its existing rules and regulations to clarify the definition of a *registered interior designer* and to restate the definition of the *practice of interior design*.

#### Title 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part XLIII. Interior Designers

#### Chapter 10. Use of Term

#### §1001. Limitation of Use of Term

A. Only those who are a *registered interior designer* licensed by the board may use the appellation registered interior designer or the plural thereof in advertising or in business usage when referring to themselves or services to be rendered.

B. Definitions. The purpose of this Section is to clarify the definition of a *registered interior designer* and to restate the definition of the *practice of interior design*. The primary purpose of a *registered interior designer* is to protect the public and to adhere to the Life Safety Codes, requirements of the Americans with Disability Act, and other building codes, statutes and ordinances which may apply to the interior spaces of a structure.

*Board*—the Louisiana State Board of Examiners of Interior Designers.

*Interior Design*—includes a scope of services performed by a professional design practitioner, qualified by means of education, experience, and examination as required by statute, to protect and enhance the health, life safety and welfare of the public. These services may include any or all of the following tasks.

a. *Interior design* includes but is not limited to space planning, finishes, furnishings, and the design for fabrication of nonstructural elements within and surrounding interior spaces of buildings.

b. *Interior design* specifically excludes the design of or the responsibility for architectural and engineering work, as defined by those occupations' organic statutes.

c. In all other matters interior designers are entitled to do all those things itemized in the practice of *interior design* stated below.

*Interior Design Document*—detailed drawings and specifications sealed and signed by a registered interior designer in accordance with applicable current building codes, ordinances, laws and regulations that define the work to be constructed in such form as is required for approval of a construction permit by a building official or fire marshal. Such document may be combined with documents prepared under the responsible control, seal and signature of other registered or licensed professionals.

*Non-Structural or Non-Seismic*—interior elements or components that are not load-bearing or do not assist in the seismic design and do not require design computations for a building's structure. It excludes the structural frame supporting a building. Common *non-structural* elements or components include, but are not limited to, ceiling and *partition* systems. These elements employ normal and typical bracing conventions and are not part of the structural integrity of the building.

*Partition*—a wall which does not support a vertical load of a structure other than its own weight, but may support loads attached to it such as cabinetry, shelving or grab bars, and does not extend further than from the floor of an interior area of a structure designed for human habitation or occupancy, to the underside of the deck of that structure.

#### *Practice of Interior Design*—

a. the rendering of services to enhance the quality and function of an interior area of a structure designed for human habitation or occupancy. The term includes:

i. an analysis of a client's needs and goals for an interior area of a structure designed for human habitation or occupancy and the requirements for safety relating to that area;

ii. the formulation of preliminary designs for an interior area designed for human habitation or occupancy that are appropriate, functional, and code compliant;

iii. the confirmation that preliminary space plans and design concepts are safe, functional, aesthetically appropriate, and meet all public health, safety and welfare requirements, including code, accessibility, environmental, and sustainability guidelines;

iv. the selection of colors, materials and finishes to appropriately convey the design concept and to meet socio-psychological, functional, maintenance, lifecycle performance, environmental, and safety requirements;

v. the development and presentation of final design documents that are appropriate for the alteration or construction of an interior area of a structure designed for human habitation or occupancy;

vi. the collaboration with licensed professionals in preparation of interior design contract documents for the alteration or construction of an interior area of a structure

designed for human habitation or occupancy, including specifications for partitions, materials, finishes, furniture, fixtures, and equipment;

vii. the collaboration with licensed professionals in the completion of a project for the alteration or construction of an interior area of a structure designed for human habitation or occupancy;

viii. the preparation and administration of bids or contracts as the agent of a client;

ix. the review and evaluation of problems relating to the design of a project for the alteration or construction of an area designed for human habitation or occupancy during the alteration or construction and upon completion of the alteration or construction;

x. preparing *interior design documents* reflecting space planning, finishes, furnishings, and the design for fabrication of nonstructural interior construction within interior spaces of buildings; reflected ceiling plan and location of teledata and electrical outlets;

xi. preparing *interior design documents* in accordance with life safety of proposed or modification of existing nonstructural and non-engineered elements of construction such as partitions, doors, stairways, and paths of egress connecting to exits or exit ways; and

xii. modification of existing building construction so as to alter the number of persons for which the egress systems of the building are designed;

b. encompasses the ability to submit documents required for the issuance of building permits or other construction documents, either by the registered interior designer alone or in collaboration with other licensed design professionals responsible for structural, mechanical, electrical, or life safety systems. This includes those systems, such as sprinklers, fire alarms, special locking, or cooking hood suppression, that require a review by the professional of record prior to submittal.

*Programming*—the scope of work which includes, but is not limited to:

- a. conducting research;
- b. identifying and analyzing the needs and goals of the client and/or occupant(s) of the space;
- c. evaluating existing documentation and conditions;
- d. assessing project resources and limitations;
- e. identifying life, safety and code requirements; and
- f. developing project schedules and budgets.

*Reflected Ceiling Plan*—a ceiling design that illustrates a ceiling as if it was projected downward and may include lighting and other code compliant elements.

*Registered Interior Designer*—a person who has received a certificate of registration pursuant to the provisions of this Chapter.

*Space Planning*—the analysis, programming, or preparation of design to meet special requirements, including preliminary space layouts, placement of partitions, furniture and equipment, and final planning in accordance with life safety codes.

*Specifications*—the detailed written description of construction, workmanship and materials of the work to be undertaken.

*Sustainability*—the use of resources in such a way that they are not depleted; a method of practice or use of materials that is capable of being continued with minimal long-term effect on the environment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3171 and R.S. 37:3176.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Examiners of Interior Designers, LR 17:1078 (November 1991), amended by the Office of the Governor, Board of Examiners of Interior Designers, LR 30:1014 (May 2004), LR 34:1925 (September 2008), LR 40:

#### **Family Impact Statement**

The proposed Rule has no known impact on family formation, stability, or autonomy, as described in R.S. 49:972.

#### **Poverty Impact Statement**

The proposed Rule will have no impact on poverty as described in R.S. 49:973.

#### **Small Business Statement**

The proposed Rule will have no adverse impact on small businesses as described in R.S. 49:965.2 et seq.

#### **Public Comments**

Interested persons may submit written comments until 3:30 p.m., December 10, 2013, to Sandy Edmonds, Board of Examiners of Interior Designers, 11736 Newcastle Avenue, Bldg 2, Suite C, Baton Rouge, LA 70816.

Sandy Edmonds  
Executive Director

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Use of Term**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed Rule change will have no impact on state or local government expenditures. The proposed Rule change clarifies the definition of a registered interior designer and to restate the definition of the practice of interior design.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed Rule change will have no impact on state or local government unit revenue collections.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The proposed Rule change will have no cost and/or economic benefits to directly affected persons or nongovernmental groups.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed Rule change will have no effect on competition and/or employment.

Sandy Edmonds  
Executive Director  
1311#014

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Office of the Governor Board of Pardons

Conditions of Parole (LAC 22:XI.903, 904, 907, and 909)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950), the Board of Pardons, Committee on Parole hereby gives notice of its intent to amend its rules of LAC 22:XI.903, 904, 907, and 909. These proposed rule changes include technical revisions; §903 removes enumerated listing of sex offenses as these are specifically enumerated in statute; §§904, 907, and 909 are repealed as sex offender registration, notification, and special condition requirements are specifically detailed in statute.

#### Title 22

### CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

#### Part XI. Committee on Parole

#### Chapter 9. Conditions of Parole

#### §903. Sex Offenders; General

A. *Sex Offender*—an offender/parolee who has been convicted for the commission, attempted commission, or conspiracy to commit any offense as cited in R.S. 15:541, or the equivalent, if committed in another jurisdiction.

B. The committee will consider any offender who has been convicted of a sex offense, when the law permits parole consideration for that offense and the offender is otherwise eligible.

C. In addition to any other notification requirement imposed by law, any sex offender released on parole shall be required to register and provide notification as a sex offender in accordance with R.S. 15:542 et seq.

D. Any sex offender released on parole shall be required to comply with the prohibitions and conditions of parole detailed in 15:538 et seq.

E. Any sex offender released on parole shall be required to comply with conditions of R.S. 15:574.2.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2302 (December 1998), amended by Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2268 (August 2013), amended by Office of the Governor, Board of Pardons, LR 40:

#### §904. Sex Offenders; General

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2303 (December 1998), amended by the Board of Pardons/Committee on Parole, repealed by Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2271 (August 2013), repealed by Office of the Governor, Board of Pardons, Committee on Parole, LR 40:

#### §907. Additional Notification and Registration Requirements for Sex Offenders if Victim Is under Age 18

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2303 (December 1998), amended by Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2268 (August 2013), repealed by Office of the Governor, Board of Pardons, LR 40:

#### §909. Special Conditions—Sex Offenders

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2303 (December 1998), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2268 (August 2013), repealed by the Office of the Governor, Board of Pardons, LR 40:

#### Family Impact Statement

Amendment to the rules has no known impact on family formation, stability or autonomy, as described in R.S. 49:972.

#### Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relations to individual or community asset development as described in R.S. 49:973.

#### Public Comments

Written comments may be addressed to Linda Landry, Principal Assistant to the Board of Pardons and Parole, P.O. Box 94303, Baton Rouge, LA 70804 until 4:30 p.m. on December 10, 2013.

Sheryl M. Ranatza  
Chairman

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Conditions of Parole

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule change will have no impact on state or local governmental unit expenditures.

The proposed rule changes are technical revisions regarding the Board of Pardons & Parole, Committee on Parole and include the following: §903 removes listing of sex offenses as these are specifically enumerated in statute; §904, 907 and 909 are repealed as sex offender registration, notification and special condition requirements are specifically detailed in statute.

#### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections of state or local governmental units as a result of the proposed rule change.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There is no estimated cost and/or economic benefit to directly affected persons or non-governmental groups as a result of the proposed rule change.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment as a result of the proposed rule change.

Thomas C. Bickham, III  
Undersecretary  
1311#026

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Office of the Governor  
Real Estate Commission**

Post License Education (LAC 46:LXVII.5527)

Under the authority of the Louisiana Real Estate License Law, R.S. 37:1430 et seq., and in accordance with the provisions of the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Louisiana Real Estate Commission has initiated procedures to amend LAC 46:LXVII.5527, to mandate the use of a standardized 45-hour post-license education course, developed by the Louisiana Real Estate Commission, in lieu of the currently prescribed course outline.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part LXVII. Real Estate**

**Subpart 1. Real Estate**

**Chapter 55. Real Estate Vendors; Post-licensing and Continuing Education**

**§5527. Post License Education Courses**

A. The commission shall prescribe the 45-hour post-license curriculum offered by approved education vendors.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Commission, LR 37:3021 (October 2011), amended LR 38:3172 (December 2012), LR 40:

**Family Impact Statement**

In accordance with R.S. 49:953(A)(1)(a)(viii) and 972, the following Family Impact Statement is submitted with the Notice of Intent for publication in the November 20, 2013 *Louisiana Register*. The proposed rules have no known impact on family, formation, stability, or autonomy.

**Poverty Impact Statement**

The proposed rules have no known impact on poverty as described in R.S. 49:973.

**Public Comments**

Interested parties are invited to submit written comments on the proposed regulations to Stephanie Boudreaux, Louisiana Real Estate Commission, P.O. Box 14785, Baton Rouge, LA 70898-4785, or 9071 Interline Avenue, Baton

Rouge, LA 70809, or sboudreaux@lrec.state.la.us, through December 11, 2013, at 4:30 p.m.

Bruce Unangst  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Post License Education**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule change will have no impact on state or local governmental unit expenditures. The purpose of the proposed rule change is to mandate the use of a standardized 45-hour post-license education course, developed by the Louisiana Real Estate Commission, in lieu of the currently prescribed course outline. This mandate will ensure that the same course content, approach, and principles are employed by real estate schools and education vendors in their course presentations, thereby ensuring a consistent learning opportunity throughout the state.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule change will have no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The mandated course material will be provided at no charge and will relieve schools and vendors of the responsibilities, expense, and time associated with individualized course development and maintenance.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change will have no effect on competition and employment.

Bruce Unangst  
Executive Director  
1311#042

John D. Carpenter  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Board of Veterinary Medicine**

Licensure Procedures, Veterinary Practice, Registered Veterinary Technicians, Professional Conduct, Preceptorship Program, Certified Animal Euthanasia Technicians (LAC 46:LXXXV. 301, 303, 307, 700, 702, 801, 803, 816, 1103, 1200, 1201)

The Louisiana Board of Veterinary Medicine proposes to amend and adopt LAC 46:LXXXV.301, 303, 307, 700, 702, 801, 803, 816, 1103, 1200, and 1201 in accordance with the provisions of the Administrative Procedure Act, L.R.S. 49:953 et seq., and the Louisiana Veterinary Practice Act, R.S. 37:1518A(9).

The proposed rules are being amended and adopted to specify the time for an application to remain open for a Veterinarian, Registered Veterinary Technician (RVT), and Certified Animal Euthanasia Technician (CAET); clarify and

define the definition of full-time private practice employment for waiver of the national veterinary medical licensing examination (NAVLE) for a qualified veterinarian; establish requirements for expedited licensure for an applicant with military qualifications and his qualified spouse in compliance with Act 276 of the 2012 Regular Legislative Session (R.S. 37:3650); clarify and establish general definitions regarding boarding versus non-boarding animal, and unlicensed veterinarian; identify the proper entity which now prepares and administers the National Veterinary Technician Examination (VTNE) for the board; establish a five time limit a qualified RVT applicant is eligible to take the national veterinary technician examination in Louisiana which is the standard in a growing number of states and as requested by the national examination agency used by all US states; clarify and establish RVT disciplinary sanctions and a Code of Ethics; clarifies that a preceptee in the preceptorship program is not to be represented as a licensed veterinarian; clarify that a veterinarian, RVT, and CAET may legally perform pre-euthanasia chemical restraint and/or chemical euthanasia; and clarify and establish that a CAET is limited to perform pre-euthanasia chemical restraint and/or chemical euthanasia only at the facility site of his employment, which may include an animal shelter's mobile vehicle, and that there may be only one lead CAET per animal control shelter or facility.

The proposed Rule regarding the limited number of five times an RVT applicant is eligible to take the national veterinary technician examination shall become effective upon promulgation with the exception of any pending application submitted to the board prior to such promulgation date.

#### **Title 46**

### **PROFESSIONAL AND OCCUPATIONAL STANDARDS**

#### **Part LXXXV. Veterinarians**

#### **Chapter 3. Licensure Procedures**

#### **§301. Applications for Licensure**

A. - E. ...

F. An application shall become stale if not completed by issuance of a license within two years from the initial date of submission to the board. Once stale, the entire application process, including the payment of applicable fees, shall begin anew.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Veterinary Medicine, LR 8:66 (February 1982), amended LR 10:464 (June 1984), amended by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 16:223 (March 1990), LR 19:343 (March 1993); LR 23:964 (August 1997), LR 25:2231 (November 1999), LR 28:1982 (September 2002), LR 40:

#### **§303. Examinations**

A. - B.3. ...

4. The requirement for taking the national examinations may be waived when an applicant:

a. holds a currently valid license in good standing in another state, district, or territory of the United States; and

b. has been employed as a licensed veterinarian in a full-time private practice or its equivalent as determined by a majority vote of the board for the five years immediately preceding his application. Full-time shall be defined as a minimum of 32 hours worked per week.

5. ...

6. An applicant whose scores are greater than five years old and who cannot demonstrate eligibility for a waiver of the national examination pursuant to §303.B.4, shall be required to successfully pass the national examination in order to be eligible for a license.

B.7. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Veterinary Medicine, LR 8:66 (February 1982), amended LR 8:144 (March 1982), amended by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 19:343 (March 1993), LR 19:1327 (October 1993), LR 23:964 (August 1997), LR 25:2232 (November 1999), LR 28:1982 (September 2002), LR 38:1592 (July 2012), LR 40:

#### **§307 Expedited License/Military Qualifications**

A. Pursuant to, and in compliance with, Act 276 of the 2012 Regular Legislative Session (R.S. 37:3650), a qualified military-trained applicant licensed as a veterinarian in another state, or having been awarded a military occupational specialty which is equivalent to or exceeds the requirements for licensure, or a military spouse licensed as a veterinarian in another state, both of whom having also actively practiced such discipline for the 90 day period immediately prior to submission of the application to the board, may be issued an expedited license to practice veterinary medicine pending good faith completion of all requirements for licensure in Louisiana set forth in the board's rules.

B. To ensure public health and safety, in the event the applicant has not actively practiced such discipline for the 90 day period immediately prior to submission of the application to the board, the applicant will be required to satisfy the preceptorship program requirement prior to the issuance of an expedited license.

C. In order for the expedited license to remain in effect, the applicant must successfully pass the next available national examination after initial application, or qualify for waiver granted by the board for the national examination pursuant to established rule.

D. In order for the expedited license to remain in effect, the applicant must successfully pass the next available state board examination after initial application. The successful passage of the state board examination is required of all applicants for licensure.

E. The board shall expedite the processing of the license to an individual who timely and properly submits information necessary to comply with the application protocol, the board's rules, and the law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Veterinary Medicine, LR 8:66 (February 1982), amended by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 23:965 (August 1997), LR 40:

## Chapter 7. Veterinary Practice

### §700. Definitions

\* \* \*

*Boarding Animal*—an animal which is housed at a veterinary facility and is not actively undergoing diagnosis or treatment for illness, disease, or injury, and/or is not actively receiving veterinary care to promote good health. An animal which becomes ill, diseased, or sustains an injury while in a veterinary facility ceases to be a boarding animal under this definition.

\* \* \*

*Direct Supervision*—Unless otherwise specifically defined in a provision, the supervision of those tasks or procedures that do not require the presence of a licensed, supervising veterinarian in the room where performed, but which require the presence of a licensed, supervising veterinarian on the premises and his availability for prompt consultation and treatment.

\* \* \*

*Non-Boarding Animal*—an animal which is actively undergoing diagnosis or treatment for illness, disease, or injury, and/or is actively receiving veterinary care to promote good health. A non-boarding animal may, or may not, be housed at a veterinary facility.

\* \* \*

*Unlicensed Veterinarians*—individuals who have completed an approved, accredited program of instruction and have received a degree as a Doctor of Veterinary Medicine, or if foreign educated have completed the Educational Commission for Foreign Veterinary Graduates (ECFVG) or the Program for the Assessment of Veterinary Education Equivalence (PAVE) program through the American Association of Veterinary State Boards (AAVSB), but who have not been issued a license by the board to practice veterinary medicine in the state of Louisiana.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 19:1328 (October 1993), amended LR 20:666 (June 1994), LR 20:1381 (December 1994), LR 24:940 and 941 (May 1998), LR 24:1932 (October 1998), LR 24:2257 (December 1998), LR 27:51 (January 2001), LR 27:543 (April 2001), LR 31:3162 (December 2005), LR 33:2424 (November 2007), LR 35:244 (February 2009); LR 40:

### §702. Direct Supervision

A. - D.2.f. ...

E. *Unlicensed veterinarians*, as defined in §700, shall not practice veterinary medicine until such time as they are licensed by the state of Louisiana. An unlicensed veterinarian may only function as a veterinary assistant under direct supervision. However, Chapter 11 governing the preceptorship program shall apply to a qualified preceptee as defined in section 1103.

F. - F.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 16:225 (March 1990), amended LR 19:1329 (October 1993), LR 24:940 (May 1998), LR 40:

## Chapter 8. Registered Veterinary Technician

### §801. Applications for Certificate of Approval

A. - E. ...

F. An application shall become stale if not completed by issuance of a certificate within two years from the initial date of submission to the board. Once stale, the entire application process, including the payment of applicable fees, shall begin anew.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1549.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 16:226 (March 1990), LR 40:

### §803. Examinations

A. The Louisiana Board of Veterinary Medicine hereby adopts the examination prepared by the American Association of Veterinary State Boards (AAVSB) (hereafter referred to as the "veterinary technician national examination" or VTNE), and hereby requires that all applicants for licensure to practice as registered veterinary technicians in the state of Louisiana shall pass this national examination in addition to any and all state examinations (herein defined as such written examinations, oral interviews, and/or practical demonstrations as the board may request or require).

B. - C. ...

D. The administration of the VTNE shall be in accordance with rules, practices, policies or procedures prescribed by the AAVSB or by any person or persons with whom the AAVSB may have contracted to administer said exam. The VTNE may be administered by members of the Louisiana Board of Veterinary Medicine or any of the agents, employees, or designees of the board.

E. - G. ...

H. An applicant for certification may only sit for the national examination a maximum of five times. Thereafter, the applicant will no longer be eligible for certification in Louisiana and any application will be rejected.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1549.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 16:226 (March 1990), amended LR 20:1380 (December 1994), LR 40:

### §816. Disciplinary Proceedings

A. ...

B. The board may deny a person's application for a certificate of approval, or revoke, suspend, place on probation, restrict, and/or reprimand a registered veterinary technician, and/or assess a fine not to exceed \$1,000 for each separate offense, when it finds noncompliance with or a violation of the provisions of the Veterinary Practice Act and/or the board's rules. The sanction shall issue after compliance with notice and a hearing as required by law.

C. The Code(s) of Ethics of the AVMA and the NAVTA regarding veterinary technicians registered by the board are hereby adopted as standards of conduct by reference. In the event, the subject Code(s) of Ethics contradict the Veterinary Practice Act and/or the board's rules, the latter shall govern.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 25:2226 (November 1999), LR 40:

## **Chapter 11. Preceptorship Program**

### **§1103. Definitions**

\* \* \*

*Preceptee*—an applicant for the preceptorship program. The preceptee is not to be considered a substitute employee and shall not be represented as a licensed veterinarian

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 16:232 (March 1990), amended LR 19:208 (February 1993), LR 23:968 (August 1997), LR 24:1293 (July 1998), LR 27:543 (April 2001), LR 28:1208 (June 2002), LR 38:357 (February 2012), LR 40:

## **Chapter 12. Certified Animal Euthanasia Technicians**

### **§1200. Definitions**

A. All definitions used in this chapter shall have the meaning assigned to them in R.S. 37:1552. In addition, the following definitions shall be applied:

\* \* \*

*Certified Animal Euthanasia Technician*—a person who is instructed in a board approved program in the proper methods of humanely euthanizing animals by injecting legal drugs in accordance with rules adopted by the board, in proper security precautions, in proper record keeping, and related skills, and who has been issued a certificate by the board. Only a certified animal euthanasia technician, registered veterinary technician (RVT), or veterinarian licensed by the board may legally perform pre-euthanasia chemical restraint and/or chemical euthanasia. Pre-euthanasia chemical restraint and/or chemical euthanasia cannot be delegated to another person who is not a certified animal euthanasia technician, registered veterinary technician (RVT), or veterinarian licensed by the board.

*Full Certification*—a certificate of approval granted to an applicant who has fulfilled all requirements of this Chapter. Such certificates shall expire annually. The certificate shall entitle the CAET to perform pre-euthanasia chemical restraint and/or chemical euthanasia only at the facility site of the certificate holder's employment, which may include an animal control shelter's mobile vehicle, and only one certificate shall be issued to a certificate holder at any one time.

*Lead Certified Animal Euthanasia Technician or Lead CAET*—a CAET who also meets the requirements of R.S. 37:1552(4). There shall be only one Lead CAET per animal control shelter or facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1558.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 19:1424 (November 1993), amended LR 26:317 (February 2000), LR 38:357 (February 2012), LR 40:

### **§1201 Applications for Certificate of Approval**

A. - C. ...

D. An application shall become stale if not completed by issuance of a certificate within two years from the initial date of submission to the board. Once stale, the entire

application process, including the payment of applicable fees, shall begin anew.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1558.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 19:1424 (November 1993), amended LR 26:317 (February 2000), LR 38:357 (February 2012), LR 40:

### **Family Impact Statement**

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, the following family impact statements will be published in the Louisiana Register with the proposed Rule.

1. The Effect on the Stability of the Family. We anticipate no effect on the stability of the family.

2. The Effect on the Authority and Rights of Parents Regarding the Education and Supervision of their Children. We anticipate no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The Effect on the Functioning of the Family. We anticipate no effect on the functioning of the family.

4. The Effect on Family Earnings and Family Budget. The proposed Rule that amends expedited licensure/military qualifications procedures will enhance the ability of the qualified applicant to enter the work force in a shorter period of time as required by Act 276 of the 2012 Regular Legislative Session (R.S. 37:3650) which may have a positive effect on family earnings and family budget; however, the effect is unable to be reasonably estimated. We anticipate no effect on family earnings and family budget regarding the remainder of the proposed Rule.

5. The Effect on the Behavior and Personal Responsibility of Children. We anticipate no effect on the behavior and personal responsibility of children.

6. The Ability of the Family or a Local Government to Perform the Function as Contained in the Proposed Rule. We anticipate no effect on the ability of the family or a local government to perform the function as contained in the proposed Rule.

### **Poverty Impact Statement**

In accordance with Section 973 of Title 49 of the Louisiana Revised Statutes, the following poverty impact statements will be published in the Louisiana Register with the proposed Rule.

1. The Effect on Household Income, Assets, and Financial Security. The proposed Rule that amends expedited licensure/military qualifications procedures will enhance the ability of the qualified applicant to enter the work force in a shorter period of time as required by Act 276 of the 2012 Regular Legislative Session (R.S. 37:3650) which may have a positive effect on household income, assets, and financial security; however, the effect is unable to be reasonably estimated. We anticipate no effect on household income, assets, and financial security regarding the remainder of the proposed Rule.

2. The Effect on Early Childhood Development and Pre-school through Post-secondary Education Development. We anticipate no effect on early childhood development and pre-school through post-secondary education development regarding the proposed Rule.

3. The Effect on Employment and Workforce Development. The proposed Rule that amends expedited licensure/military qualifications procedures will enhance the ability of the qualified applicant to enter the work force in a shorter period of time which may have a positive effect on employment and workforce development; however, the effect is unable to be reasonably estimated. We anticipate no effect on employment and workforce development regarding the remainder of the proposed Rule.

4. The Effect on Taxes and Tax Credits. We anticipate no effect on taxes and tax credits regarding the proposed Rule.

5. The Effect on Child and Dependant Care, Housing, Health Care, Nutrition, Transportation, and Utilities Assistance. We anticipate no effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance regarding the proposed Rule.

#### **Small Business Impact Statement**

In accordance with Section 965 of Title 49 of the Louisiana Revised Statutes, the following regulatory flexibility analysis will be published in the Louisiana Register with the proposed Rules.

1. The Establishment of Less Stringent Compliance or Reporting Requirements for Small Businesses. There are no changes in record keeping or reporting requirements for small businesses.

2. The Establishment of Less Stringent Schedules or Deadlines for Compliance or Reporting Requirements for Small Businesses. There are no changes in the deadlines for compliance or reporting requirements for small businesses.

3. The Consolidation or Simplification of Compliance or Reporting Requirements for Small Businesses. There are no changes in compliance or reporting requirements for small businesses.

4. The Establishment of Performance Standards for Small Businesses to Replace Design or Operational Standards in the Proposed Rule. There are no design or operational standards in the proposed Rule.

5. The Exemption of Small Businesses from All or Any Part of the Requirements Contained in the Proposed Rule. There are no exemptions for small businesses in the proposed Rule.

#### **Public Comments**

Interested parties may submit written comments to Wendy D. Parrish, Executive Director, Louisiana Board of Veterinary Medicine, 263 Third Street, Suite 104, Baton Rouge, LA 70801, or by facsimile to (225) 342-2142. Comments will be accepted through the close of business on Friday, December 20, 2013.

#### **Public Hearing**

If it becomes necessary to convene a public hearing to receive comments in accordance with the Administrative Procedure Act, the hearing will be held on Friday, December 27, 2013, at 10 am at the office of the Louisiana Board of Veterinary Medicine, 263 Third Street, Suite 104, Baton Rouge, LA.

Wendy D. Parrish  
Executive Director

## **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

### **RULE TITLE: Licensure Procedures, Veterinary Practice, Registered Veterinary Technicians, Professional Conduct, Preceptorship Program, Certified Animal Euthanasia Technicians**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

This proposed rule amends Louisiana Administrative Code (LAC) Title 46, Part LXXXV, Sections 301, 303, 307, 700, 702, 801, 803, 816, 1103, 1200, and 1201. The proposed rule amends and adopts the following changes:

(1) Sections 301, 801, and 1201 specify the time for an application to remain open for a Veterinarian, Registered Veterinary Technician (RVT), and Certified Animal Euthanasia Technician (CAET);

(2) Section 303 clarifies and defines the definition of full-time private practice employment for waiver of the national veterinary medical licensing examination for a qualified veterinarian;

(3) Section 307 establishes requirements for expedited licensure for an applicant with military qualifications and his qualified spouse in compliance with Act 276 of the 2012 Regular Legislative Session (R.S. 37:3650);

(4) Sections 700 and 702 clarify and establish general definitions regarding boarding versus non-boarding animal and unlicensed veterinarian;

(5) Section 803 identifies the proper entity, which now prepares and administers the National Veterinary Technician Examination for the Board; and establishes a five time limit a qualified RVT applicant is eligible to take the national veterinary technician examination in Louisiana, which is the standard in a growing number of states, and as requested by the national examination agency used by all US states;

(6) Section 816 clarifies and establishes RVT disciplinary sanctions and a Code of Ethics;

(7) Section 1103 clarifies that a preceptee in the preceptorship program is not to be represented as a licensed veterinarian;

(8) Section 1200 clarifies that a veterinarian, RVT, and CAET may legally perform pre-euthanasia chemical restraint and/or chemical euthanasia; and further clarifies and establishes that a CAET is limited to perform pre-euthanasia chemical restraint and/or chemical euthanasia only at the facility site of his employment, which may include an animal shelter's mobile vehicle, and that there may be only one Lead CAET per animal control shelter or facility.

There will be no estimated costs (savings) to State or local governmental units with regards to the proposed rule. The only cost associated with this proposed rule is the cost of publication that is anticipated at \$800 Fees and Self-Generated Revenues in FY 13-14. This cost is routinely included in the board's annual operating budget.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There will be no increase on revenue collections of State or local governmental units with regards to the proposed rule.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

Section 307 of this proposed rule regarding expedited licensure/military qualifications procedures will enhance the ability of the qualified applicant to enter the work force in a shorter period of time as required by Act 276 of the 2012

Regular Legislative Session (L.R.S. 37:3650) which will be an estimated economic benefit to directly affected persons or non-governmental groups; however, the benefit amount cannot be estimated as the board is unaware of how many persons, if any, will take advantage of this opportunity. The current amount of application fees payable to the board by the applicant will not be changed by the proposed rules.

There will be no costs and/or economic benefits to directly affected persons or non-governmental groups with regards to the remaining sections of this proposed rule.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Section 307 of this proposed rule that amends expedited licensure/military qualifications procedures will enhance the ability of the qualified applicant to enter the work force in a shorter period of time as required by Act 276 of the 2012 Regular Legislative Session (R.S. 37:3650) may have a minimal effect on competition and employment; however, the effect is unable to be estimated as the board is unaware of how many qualified persons, if any, will take advantage of this opportunity.

Section 801 of this proposed rule limiting the number to five times an applicant is eligible to take the veterinary technician national examination in Louisiana may have a minimal impact on competition and employment for those applicants who may have otherwise successfully passed the examination on successive attempts; however, successful passage after five attempts is extremely uncommon, and such applicants have been found to not pursue registration in Louisiana.

There will be no effect on competition and employment with regards to the remaining sections of this proposed rule.

Wendy Parrish  
Executive Director  
1311#041

John D. Carpenter  
Legislative Fiscal Officer  
Legislative Fiscal Office

### NOTICE OF INTENT

#### Department of Health and Hospitals Bureau of Health Services Financing

Coordinated Care Network  
(LAC 50:I.Chapter 31, 3303, and 3307)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:I. Chapter 31, §3303, and §3307 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing adopted provisions which implemented a coordinated system of care in the Medicaid Program designed to improve performance and health care outcomes through a healthcare delivery system called coordinated care networks, also known as the BAYOU HEALTH Program (*Louisiana Register*, Volume 37, Number 6).

The department promulgated an Emergency Rule which amended the provisions of the June 20, 2011 Rule to revise the BAYOU HEALTH Program enrollment process to implement immediate auto-assignment of pregnant women whose Medicaid eligibility is limited to prenatal, delivery and post-partum services. Act 13 of the 2012 Regular

Session of the Louisiana Legislature eliminated the CommunityCARE Program. This Emergency Rule also amends these provisions to align the BAYOU HEALTH Program with the directives of Act 13 by removing provisions relative to the former CommunityCARE Program (*Louisiana Register*, Volume 38, Number 8). The department promulgated an Emergency Rule which amended the August 1, 2012 Emergency Rule to clarify the provisions for enrollment (*Louisiana Register*, Volume 38, Number 12). The department promulgated an Emergency Rule which amended the recipient participation provisions governing the coordinated care networks in order to include health care services provided to LaCHIP Affordable Plan recipients in the BAYOU HEALTH Program (*Louisiana Register*, Volume 38, Number 12).

The department promulgated an Emergency Rule which amended the provisions of the November 29, 2012 Emergency Rule in order to revise the formatting of these provisions as a result of the January 1, 2013 Emergency Rule governing the coordinated care network (*Louisiana Register*, Volume 39, Number 3). This proposed Rule is being promulgated to continue the provisions of the March 20, 2013 Emergency Rule.

### Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part I. Administration

#### Subpart 3. Medicaid Coordinated Care

#### Chapter 31. Coordinated Care Network

#### §3103. Recipient Participation

A. - B.1.b.v. ...

NOTE. Repealed.

C. - D.1.i. ...

j. are enrolled in the Louisiana Health Insurance Premium Payment (LaHIPP) Program.

k. Repealed.

E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:1573 (June 2011), amended LR 40:

#### §3105. Enrollment Process

A. - D.1. ...

2. The CCN and its providers shall be required to register all births through the Louisiana Electronic Event Registration System (LEERS) administered by DHH/Vital Records Registry and complete any other Medicaid enrollment form required by DHH.

E. - E.1. ...

2. New recipients, excluding those whose Medicaid eligibility is predicated upon determination of pregnancy, shall be given no less than 30 calendar days from the postmark date of an enrollment form mailed by the enrollment broker to select a CCN and primary care provider (PCP).

a. ...

3. Pregnant recipients with Medicaid eligibility limited to prenatal, delivery, and post-partum services will immediately be automatically assigned to a CCN by the enrollment broker.

a. - d. Repealed.

4. The following provisions will be applicable for recipients who are mandatory or voluntary participants.

a. If there are two or more CCNs in a department designated service area in which the recipient resides, they shall select one.

b. If there is only one CCN in a department designated service area where the recipient resides, the recipient must choose either the CCN, Medicaid fee-for-service or an alternative Medicaid managed care program that coordinates care and which the department makes available in accordance with the promulgation of administrative Rules.

c. Recipients who fail to make a selection will be automatically assigned to a participating CCN in their area.

d. Recipients may request to transfer out of the CCN for cause and the effective date of enrollment shall be no later than the first day of the second month following the calendar month that the request for disenrollment is filed.

#### F. Automatic Assignment Process

1. The following participants shall be automatically assigned to a CCN by the enrollment broker in accordance with the department's algorithm/formula and the provisions of §3105.E:

a. mandatory CCN participants that fail to select CCN and voluntary participants that do not exercise their option not to participate in the CCN program within the minimum 30 day window;

b. pregnant women with Medicaid eligibility limited to prenatal care, delivery, and post-partum services; and

c. other recipients as determined by the department.

d. - e. Repealed.

2. CCN automatic assignments shall take into consideration factors including, but not limited to:

a. the potential enrollee's geographic parish of residence;

b. assigning members of family units to the same CCN;

c. previous relationships with a Medicaid provider;

d. CCN capacity; and

e. CCN performance outcome indicators (when available).

3. Neither the MCO model nor the shared savings model will be given preference in making automatic assignments.

4. CCN automatic assignment methodology shall be available to recipients upon request to the enrollment broker prior to enrollment.

#### G. - G.2.a. ...

b. selects a PCP within the CCN that has reached their maximum physician/patient ratio;

c. selects a PCP within the CCN that has restrictions/limitations (e.g. pediatric only practice); or

d. has been automatically assigned to the CCN due to eligibility limited to pregnancy-related services.

3. Members who do not proactively choose a PCP with a CCN will be automatically assigned to a PCP by the CCN. The PCP automatically assigned to the member shall be located within geographic access standards of the member's home and/or best meets the needs of the member. Members for whom a CCN is the secondary payor will not be assigned to a PCP by the CCN, unless the members request that the CCN do so.

#### G.4. - H.1. ...

2. The 90-day option to change is not applicable to CCN linkages as a result of open enrollment.

#### I. Annual Open Enrollment

1. The department will provide an opportunity for all CCN members to retain or select a new CCN during an annual open enrollment period. Notification will be sent to each CCN member at least 60 days prior to the effective date of the annual open enrollment. Each CCN member shall receive information and the offer of assistance with making informed choices about CCNs in their area and the availability of choice counseling.

#### 2. ...

3. During the open enrollment period, each Medicaid enrollee shall be given the option to either remain in their existing CCN or select a new CCN.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:1574 (June 2011), amended LR 40:

### **§3107. Disenrollment and Change of Coordinated Care Network**

#### A. - F.1.j. ...

k. member enrolls in the Louisiana Health Insurance Premium Payment (LaHIPP) Program.

#### G. - G.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:1575 (June 2011), amended LR 40:

### **§3109. Member Rights and Responsibilities**

#### A. - A.11. ...

B. Members shall have the freedom to exercise the rights described herein without any adverse effect on the member's treatment by the department or the CCN, or its contractors or providers.

#### C. - C.8. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:1576 (June 2011), amended LR 40:

### **Chapter 33. Coordinated Care Network Shared Savings Model**

#### **§3303. Shared Savings Model Responsibilities**

#### A. - R.4. ...

a. immediately notifying the department if he or she has a Workman's Compensation claim, a pending personal injury or medical malpractice law suit, or has been involved in an auto accident;

#### R.4.b. - T.3. ...

#### U. - U.1. Reserved.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:1578 (June 2011), amended LR 40:

#### **§3307. Reimbursement Methodology**

#### A. - C. ...

1. The CCN-S may reimburse the PCP a monthly base case management fee for each enrollee assigned to the PCP.

#### 2. ...

- 3. - 3.b. Repealed.
- D. - F. ...

1. The reconciliation shall compare the actual aggregate cost of authorized/preprocessed services as specified in the contract and include the enhanced primary care case management fee for dates of services in the reconciliation period, to the aggregate Per Capita Prepaid Benchmark (PCPB).

- 2. - 3.n. ...
- o. Reserved.

- 4. - 5.c. ...

6. In the event the CCN-S exceeds the PCPB in the aggregate (for the entire CCN-S enrollment) as calculated in the final reconciliation, the CCN-S will be required to refund up to 50 percent of the total amount of the enhanced primary care case management fees paid to the CCN-S during the period being reconciled.

- 7. ...

a. Due to federally mandated limitations under the Medicaid State Plan, shared savings will be limited to five percent of the actual aggregate costs including the enhanced primary care case management fees paid. Such amounts shall be determined in the aggregate and not for separate enrollment types.

- b. Repealed.

- 8. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:1581 (June 2011), amended LR 40:

**Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule may have a positive impact on family functioning, stability and autonomy as described in R.S. 49:972 as it will provide for continuity of care and improve quality of care for pregnant women.

**Poverty Impact Statement**

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule may have a positive impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973 as it will provide for continuity of care and may possibly reduce the cost of health care for pregnant women.

**Public Comments**

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this proposed Rule. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

**Public Hearing**

A public hearing on this proposed Rule is scheduled for Monday, December 30, 2013 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge,

LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing.

Kathy H. Kliebert  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Coordinated Care Network**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that implementation of this proposed Rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 13-14. It is anticipated that \$820 (\$410 SGF and \$410 FED) will be expended in FY 13-14 for the state's administrative expense for promulgation of this proposed Rule and the final Rule.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

It is anticipated that the implementation of this proposed Rule will not affect revenue collections other than the federal share of the promulgation costs for FY 13-14. It is anticipated that \$410 will be collected in FY 13-14 for the federal share of the expense for promulgation of this proposed Rule and the final Rule.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

This proposed Rule continues the provisions of the March 20, 2013 Emergency Rule which amended the provisions governing the coordinated care network in order to revise the BAYOU HEALTH Program enrollment process to implement immediate auto-assignment of pregnant women whose Medicaid eligibility is limited to prenatal, delivery and post-partum services. It is anticipated that implementation of this proposed Rule will not have economic costs, but will benefit pregnant women enrolled in coordinated care networks for FY 13-14, FY 14-15, and FY 15-16 by ensuring continuity of care and improving the quality of care they receive.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

This Rule has no known effect on competition and employment.

J. Ruth Kennedy  
Medicaid Director  
1311#078

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Bureau of Health Services Financing**

Hospice Services  
(LAC 50:XV.Chapters 33-43)

The Department of Health and Hospitals, Bureau of Health Services Financing, proposes to amend LAC 50:XV.Chapters 33-43 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

As a result of a budgetary shortfall in state fiscal year 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for hospice services provided to long-term care residents to reduce the reimbursement rates (*Louisiana Register*, Volume 35, Number 9).

The Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing hospice services in order to bring these provisions into compliance with the requirements of the Patient Protection and Affordable Care Act (PPACA) and also amended the provisions governing prior authorization for hospice services in order to control the escalating costs associated with the Hospice Program (*Louisiana Register*, Volume 38, Number 3). The department promulgated an Emergency Rule which amended the provisions of the May 1, 2012 Emergency Rule governing hospice services to revise the formatting of these provisions in order to ensure that the provisions are promulgated in a clear and concise manner (*Louisiana Register*, Volume 39, Number 11). This proposed Rule is being promulgated to continue the provisions of the November 20, 2013 Emergency Rule, and to further revise and clarify the provisions governing hospice services.

#### **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part XV. Services for Special Populations**

##### **Subpart 3. Hospice**

#### **Chapter 33. Provider Participation**

##### **§3301. Conditions for Participation**

###### **A. Statutory Compliance**

1. Coverage of Medicaid hospice care shall be in accordance with:

a. 42 USC 1396d(o); and

b. the Medicare Hospice Program guidelines as set forth in 42 CFR Part 418.

1.c. - 2. Repealed.

###### **B. ...**

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1466 (June 2002), amended LR 30:1024 (May 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

#### **Chapter 35. Recipient Eligibility**

##### **§3501. Election of Hospice Care**

###### **A. - F. ...**

G. Election Statement Requirements. The election statement must include:

1. ...

2. the individual's or his/her legal representative's acknowledgment that he or she has been given a full understanding of the palliative rather than curative nature of hospice care, as it relates to the individual's terminal illness;

3. - 4. ...

5. the signature of the individual or his/her legal representative.

H. Duration of Election. An election to receive hospice care will be considered to continue through the initial election period and through the subsequent election periods without a break in care as long as the individual:

1. remains in the care of a hospice;

2. does not revoke the election under the provisions of §3505; and

3. is not discharged from hospice in accordance with §3505.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 19:749 (June 1993), amended LR 28:1466 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

##### **§3503. Waiver of Payment for Other Services**

A. Individuals who are 21 and over and approved to receive hospice may not receive any other services that are related to the treatment of the terminal condition or that are equivalent to hospice care. The hospice provider must provide services to the individual that are comparable to the services they received through Medicaid prior to their election of hospice. These services include, but are not limited to:

1. pharmaceutical and biological services;

2. durable medical equipment; and

a. - c. Repealed.

3. any other services permitted by federal law.

4. The services listed in §3503.A.1-3 are for illustrative purposes only. The hospice provider is not exempt from providing care if an item or category is not listed.

B. Individuals under age 21 who are approved for hospice may continue to receive curative treatments for their terminal illness; however, the hospice provider is responsible to coordinate all curative treatments related to the terminal illness.

1. *Curative Treatments*—medical treatment and therapies provided to a patient with the intent to improve symptoms and cure the patient's medical problem. Antibiotics, chemotherapy, a cast for a broken limb are examples of curative care.

2. Curative care has as its focus the curing of an underlying disease and the provision of medical treatments to prolong or sustain life.

3. Curative care does not include home health services including Durable Medical Equipment, Personal Care Service, Extended Home Health and Pediatric Day Health Care. The hospice provider is responsible to provide these services or contract for the performance of these services.

C. The hospice provider is responsible for making a daily visit to all clients under age 21 and for the coordination of care to assure there is no duplication of services. The daily visit is not required if the person is not in the home due to hospitalization or inpatient respite or inpatient hospice stays.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1467 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

### **§3505. Revoking the Election of Hospice Care/Discharge**

A. - A.4.b. ...

5. Re-election of Hospice Benefits. If an election has been revoked in accordance with the provisions of this §3505, the individual or his/her representative may at any time file an election, in accordance with §3501, for any other election period that is still available to the individual.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1467 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

## **Chapter 37. Provider Requirements**

### **§3701. Requirements for Coverage**

A. To be covered, a Certification of Terminal Illness must be completed as set forth in §3703, the Election of Hospice Care Form must be completed in accordance with §3501, and a plan of care must be established in accordance with §3705. A written narrative from the referring physician explaining why the patient has a prognosis of six months or less must be included in the Certificate of Terminal Illness.

B. Prior authorization requirements stated in Chapter 41 of these provisions are applicable to all election periods beyond the initial 90-day period and one subsequent 90-day period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1467 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

### **§3703. Certification of Terminal Illness**

A. ...

1. For the first 90-day period of hospice coverage, the hospice must obtain a written certification no later than two calendar days after hospice care is initiated. If a verbal certification is not obtained within two calendar days following the initiation of hospice care, a written certification must be made within 10 calendar days following the initiation of hospice care. The written certification and Notice of Election must be obtained before requesting prior authorization for hospice care. If these requirements are not met, no payment is made for the days prior to the certification. Instead, payment begins with the day certification, i.e., the date all certification forms are obtained.

a. - c. Repealed.

2. For the subsequent periods, a written certification must be included in an approved prior authorization packet before a claim may be billed.

2.a. - 4. Repealed.

B. Face-to-Face Encounter

1. A hospice physician or hospice nurse practitioner must have a face-to-face encounter with each hospice patient whose total stay across all hospices is anticipated to reach

the third benefit period. The face-to-face encounter must occur no more than 30 calendar days prior to the third benefit period recertification, and every benefit period recertification thereafter, to gather clinical findings to determine continued eligibility for hospice care.

2. The physician or nurse practitioner who performs the face-to-face encounter with the patient must attest in writing that he or she had a face-to-face encounter with the patient, including the date of that visit. The attestation of the nurse practitioner or a non-certifying hospice physician shall state that the clinical findings of that visit were provided to the certifying physician for use in determining continued eligibility for hospice care.

C. Content of Certifications

1. Certifications shall be based on the physician's or medical director's clinical judgment regarding the normal course of the individual's illness.

2. The certification must specify that the individual's prognosis is for a life expectancy of six months or less if the terminal illness runs its normal course.

3. Written clinical information and other documentation that support the medical prognosis must accompany the certification of terminal illness and must be based on the physician's clinical judgment regarding the normal course of the individual's illness filed in the medical record with the written certification, as set forth in §3703.C.

4. The physician must include a brief written narrative explanation of the clinical findings that support a life expectancy of six months or less as part of the certification and recertification forms.

a. The physician may include an addendum to the certification and recertification forms which shall include, at a minimum:

- i. the patient's name;
- ii. physician's name;
- iii. terminal diagnosis(es);
- iv. prognosis; and
- v. the name and signature of the IDG member

making the referral.

b. The narrative must reflect the patient's individual clinical circumstances and cannot contain check boxes or standard language used for all patients.

c. The narrative associated with the third benefit period recertification and every subsequent recertification must include an explanation of why the clinical findings of the face-to-face encounter support a life expectancy of six months or less, and shall not be the same narrative as previously submitted.

d. prognosis; and

e. the name and signature of the IDG member taking the referral.

5. All certifications and recertifications must be signed and dated by the physician(s), and must include the benefit period dates to which the certification or recertification applies.

D. Sources of Certification

1. For the initial 90-day period, the hospice must obtain written certification statements as provided in §3703.A.1 from:

- a. the hospice's medical director or physician member of the hospice's interdisciplinary group; and
- b. the individual's attending physician.

i. The attending physician is a doctor of medicine or osteopathy and is identified by the individual, at the time he or she elects to receive hospice care, as having the most significant role in the determination and delivery of the individual's medical care.

ii. The attending physician is the physician identified within the Medicaid system as the provider to which claims have been paid for services prior to the time of the election of hospice benefits.

2. For subsequent periods, the only requirement is certification by either the medical director of the hospice or the physician member of the hospice interdisciplinary group.

E. Maintenance of Records. Hospice staff must make an appropriate entry in the patient's clinical record as soon as they receive an oral certification and file written certifications in the clinical record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 19:749 (June 1993), amended LR 28:1468 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

### **§3705. Plan of Care**

A. - B. ...

C. When developing the plan of care (POC), the hospice provider must consult with, and collaborate with the recipient, his/her caregiver, and his/her long-term personal care services (LT-PCS) provider. If the recipient is receiving LT-PCS at the time of admission to hospice, the hospice provider must ensure that the POC clearly and specifically details the services and tasks, along with the frequency, to be performed by the LT-PCS provider, as well as the services and tasks, along with the frequency, that are to be performed by the hospice provider to ensure that services are non-duplicative and that the recipient's needs are being met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1468 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

## **Chapter 39. Covered Services**

### **§3901. Medical and Support Services**

A. - A.11.b.iv. ...

c. Inpatient Respite Care Day. An inpatient respite care day is a day on which the individual receives care in an approved facility on a short-term basis, not to exceed five days in any one election period, to relieve the family members or other persons caring for the individual at home. An approved facility is one that meets the standards as provided in 42 CFR §418.98(b). This service cannot be delivered to individuals already residing in a nursing facility.

d. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1468 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

## **Chapter 41. Prior Authorization**

### **§4101. Prior Authorization of Hospice Services**

A. Prior authorization is required for all election periods as specified in §3501.C of this Subpart. The prognosis of terminal illness will be reviewed. A patient must have a terminal prognosis and not just certification of terminal illness. Authorization will be made on the basis that a patient is terminally ill as defined in federal regulations. These regulations require certification of the patient's prognosis, rather than diagnosis. Authorization will be based on objective clinical evidence contained in the clinical record which supports the medical prognosis that the patient's life expectancy is six months or less if the illness runs its normal course and not simply on the patient's diagnosis.

1. The Medicare criteria found in *Local Coverage Determination (LCD) Hospice Determining Terminal Status (L32015)* will be used in analyzing information provided by the hospice to determine if the patient meets clinical requirements for this program.

2. Providers shall submit the appropriate forms and documentation required for prior authorization of hospice services as designated by the department in the Medicaid Program's service and provider manuals, memorandums, etc.

B. Written Notice of Denial. In the case of a denial, a written notice of denial shall be submitted to the hospice, recipient, and nursing facility, if appropriate.

C. Reconsideration. Claims will only be paid from the date of the Hospice Notice of Election if the prior authorization request is received within 10 days from the date of election and is approved. If the prior authorization request is received 10 days or more after the date on the Hospice Notice of Election, the approved begin date for hospice services is the date the completed prior authorization packet is received.

D. Appeals. If the recipient does not agree with the denial of a hospice prior authorization request, the recipient, or the hospice on behalf of the recipient, can request an appeal of the prior authorization decision. The appeal request must be filed with the Division of Administrative Law within 30 days from the date of the postmark on the denial letter. The appeal proceedings will be conducted in accordance with the Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1470 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

## **Chapter 43. Reimbursement**

### **§4303. Levels of Care for Payment**

A. - B.3. ...

C. Inpatient Respite Care. The inpatient respite care rate is paid for each day the recipient is in an approved inpatient facility and is receiving respite care (see §3901.A.11.c). Respite care may be provided only on an occasional basis and payment for respite care may be made for a maximum of five days at a time including the date of admission but not counting the date of discharge. Payment for the day of discharge in a respite setting shall be at the routine home level-of-care discharged alive rate.

1. ...
2. Respite care may not be provided when the hospice patient is a nursing home resident, regardless of the setting, i.e., long-term acute care setting.

D. General Inpatient Care. Payment at the inpatient rate is made when an individual receives general inpatient care in an inpatient facility for pain control or acute or chronic symptom management which cannot be managed in other settings. General inpatient care is a short-term level of care and is not intended to be a permanent solution to a negligent or absent caregiver. A lower level of care must be used once symptoms are under control. General inpatient care and nursing facility or an intermediate care facility for persons with intellectual disabilities room and board cannot be reimbursed for the same recipient on the same covered days of service. Payment for the day of discharge in a general inpatient setting shall be at the routine home level-of-care discharged alive rate.

1. - 2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1470 (June 2002), LR 34:441 (March 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

**§4305. Hospice Payment Rates**

- A. - A.2. ...

a. The hospice is paid for other physicians' services, such as direct patient care services, furnished to individual patients by hospice employees and for physician services furnished under arrangements made by the hospice unless the patient care services were furnished on a volunteer basis. The physician visit for the face-to-face encounter will not be reimbursed by the Medicaid Program.

- b. - d.ii. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1470 (June 2002), LR 34:441 (March 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

**§4307. Payment for Long Term Care Residents**

- A. ...

1. who is residing in a nursing facility or intermediate care facility for persons with intellectual disabilities (ICF/ID);

2. who would be eligible under the state plan for nursing facility services or ICF/ID services if he or she had not elected to receive hospice care;

3. ...

4. for whom the hospice agency and the nursing facility or ICF/ID have entered into a written agreement in accordance with the provisions set forth in the Licensing Standards for Hospice Agencies (LAC 48:I.Chapter 82), under which the hospice agency takes full responsibility for the professional management of the individual's hospice care and the facility agrees to provide room and board to the individual.

- B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 19:749 (June 1993), amended LR 28:1471 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1894 (September 2009), LR 40:

**§4309. Limitation on Payments for Inpatient Care**

- A. ...

1. During the 12-month period beginning November 1 of each year and ending October 31, the number of inpatient respite care days for any one hospice recipient may not exceed five days per occurrence.

2. - 2.b....

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1472 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

**Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability or autonomy as described in R.S. 49:972.

**Poverty Impact Statement**

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

**Public Comments**

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this proposed Rule. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

**Public Hearing**

A public hearing on this proposed Rule is scheduled for Monday, December 30, 2013 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing.

Kathy H. Kliebert  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Hospice Services**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that the implementation of this proposed Rule will result in estimated state general fund programmatic savings of \$166,987 for FY 12-13, \$229,764 for FY 13-14 and \$249,307 for FY 14-15. It is anticipated that \$1,476 (\$738 SGF and \$738 FED) will be expended in FY 12-13 for the

state's administrative expense for promulgation of this proposed Rule and the final Rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 61.48 percent in FY 14-15. The enhanced rate of 62.11 percent for the last nine months of FY 14 is the federal rate for disaster-recovery FMAP adjustment states.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed Rule will reduce federal revenue collections by approximately \$333,408 for FY 12-13, \$390,549 for FY 13-14 and \$389,615 for FY 14-15. It is anticipated that \$738 will be expended in FY 12-13 for the federal administrative expenses for promulgation of this proposed Rule and the final Rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 62.96 percent in FY 13-14. The enhanced rate of 62.11 percent for the last nine months of FY 14 is the federal rate for disaster-recovery FMAP adjustment states.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed Rule, which continues the provisions of the November 20, 2013 Emergency Rule, amends the provisions governing hospice services to bring these provisions into compliance with the Affordable Care Act (ACA) requirements, and also revises and clarifies the provisions governing prior authorization for hospice services. It is anticipated that implementation of this proposed rule will decrease program expenditures in the Medicaid Program by approximately \$501,871 for FY 12-13, \$620,313 for FY 13-14 and \$638,922 for FY 14-15.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this proposed rule will not have an effect on competition. However, we anticipate that the implementation may have a negative effect on employment as it will reduce the payments made to hospice providers. The reduction in payments may adversely impact the financial standing of these providers and could possibly cause a reduction in employment opportunities.

J. Ruth Kennedy  
Medicaid Director  
1311#079

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Bureau of Health Services Financing**

**Inpatient Hospital Services  
Non-Rural, Non-State Hospitals  
Reimbursement Rate Reductions  
(LAC 50:V.Chapter 9)**

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:V.Chapter 9 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

As a result of a budgetary shortfall in state fiscal year (SFY) 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for

inpatient hospital services to reduce the reimbursement rates for inpatient hospital services rendered by non-rural, non-state hospitals (*Louisiana Register*, Volume 37, Number 7).

In anticipation of a budgetary shortfall in state fiscal year 2013 as a result of the reduction in the state's disaster recovery Federal Medical Assistance Percentage (FMAP) rate, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for inpatient hospital services to reduce the reimbursement rates paid to non-rural, non-state hospitals (*Louisiana Register*, Volume 38, Number 8). Due to a continuing budgetary shortfall in SFY 2013, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for inpatient hospital services to further reduce the reimbursement rates paid to non-rural, non-state hospitals (*Louisiana Register*, Volume 39, Number 1). This proposed Rule is being promulgated to continue the provisions of the August 1, 2012 and February 1, 2013 Emergency Rules.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part V. Hospital Services**

**Subpart 1. Inpatient Hospital Services**

**Chapter 9. Non-Rural, Non-State Hospitals**

**Subchapter B. Reimbursement Methodology**

**§953. Acute Care Hospitals**

- A. - H.2....
- 3. - 5. Reserved.
- I. - I.2. ...
- 3. - 5. Reserved.
- J. - N.2.b. ...
- 3. - 6. Reserved.
- O. - Q.1....

R. Effective for dates of service on or after August 1, 2012, the inpatient per diem rate paid to acute care hospitals shall be reduced by 3.7 percent of the per diem rate on file as of July 31, 2012.

S. Effective for dates of service on or after February 1, 2013, the inpatient per diem rate paid to acute care hospitals shall be reduced by 1 percent of the per diem rate on file as of January 31, 2013.

T. Reserved.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:876 (May 2008), amended LR 34:877 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1895 (September 2009), amended LR 36:1552(July 2010), LR 36:2561 (November, 2010), LR 37:2161 (July 2011), LR 40:

**§955. Long Term Hospitals**

- A. - H. ...
- I. Effective for dates of service on or after August 1, 2012, the inpatient per diem rate paid to long term hospitals shall be reduced by 3.7 percent of the per diem rate on file as of July 31, 2012.
- J. Effective for dates of service on or after February 1, 2013, the inpatient per diem rate paid to long term hospitals shall be reduced by 1 percent of the per diem rate on file as of January 31, 2013.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR: 34:876 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1895 (September 2009), amended LR 36:1554 (July 2010), LR 36:2562 (November, 2010), LR 37:2162 (July 2011), LR 40:

### §967. Children's Specialty Hospitals

A. - H. ...

I. Reserved.

J. Effective for dates of service on or after August 1, 2012, the per diem rates as calculated per §967.A.-C above shall be reduced by 3.7 percent. Final payment shall be the lesser of allowable inpatient acute care and psychiatric costs as determined by the cost report or the Medicaid discharges or days as specified per §967.A.-C for the period, multiplied by 85.53 percent of the target rate per discharge or per diem limitation as specified per §967.A.-C for the period.

K. Effective for dates of service on or after February 1, 2013, the per diem rates as calculated per §967.A.-C above shall be reduced by 1 percent. Final payment shall be the lesser of allowable inpatient acute care and psychiatric costs as determined by the cost report or the Medicaid discharges or days as specified per §967.A.-C for the period, multiplied by 84.67 percent of the target rate per discharge or per diem limitation as specified per §967.A.-C for the period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, amended LR 36:2562 (November, 2010), LR 37:2162 (July 2011), LR 40:

#### Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule may have an adverse impact on family functioning, stability and autonomy as described in R.S. 49:972 in the event that provider participation in the Medicaid Program is diminished as a result of reduced reimbursement rates.

#### Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule may have an adverse impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973 in the event that health care assistance is reduced as a result of diminished provider participation due to the reimbursement rate reductions.

#### Public Comments

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this proposed Rule. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

#### Public Hearing

A public hearing on this proposed Rule is scheduled for Monday, December 30, 2013 at 9:30 a.m. in Room 118,

Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing.

Kathy H. Kliebert  
Secretary

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

#### RULE TITLE: Inpatient Hospital Services Non-Rural, Non-State Hospitals Reimbursement Rate Reductions

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that the implementation of this proposed rule will result in estimated state general fund programmatic savings of \$7,286,632 for FY 13-14, \$7,805,380 for FY 14-15 and \$8,083,371 for FY 15-16. It is anticipated that \$492 (\$246 SGF and \$246 FED) will be expended in FY 13-14 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 61.48 percent in FY 14-15. The enhanced rate of 62.11 percent for the last nine months of FY 14 is the federal rate for disaster-recovery FMAP adjustment states.

#### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will reduce federal revenue collections by approximately \$12,385,873 for FY 13-14, \$12,457,807 for FY 14-15 and \$12,787,712 for FY 15-16. It is anticipated that \$246 will be expended in FY 13-14 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 61.48 percent in FY 14-15. The enhanced rate of 62.11 percent for the last nine months of FY 14 is the federal rate for disaster-recovery FMAP adjustment states.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule continues the provisions of the August 1, 2012, and February 1, 2013 Emergency Rules which amended the provisions governing the reimbursement methodology for non-rural, non-state inpatient hospital services to reduce the reimbursement rates. It is anticipated that implementation of this proposed rule will reduce program expenditures in the Medicaid Program by approximately \$19,672,997 for FY 13-14, \$20,263,187 for FY 14-15 and \$20,871,083 for FY 15-16.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this proposed rule will not have an effect on competition. However, it is anticipated that the implementation of this proposed rule may have a negative effect on employment as it will reduce the payments made for inpatient hospital services. The reduction in payments may adversely impact the financial standing of providers and could possibly cause a reduction in employment opportunities.

J. Ruth Kennedy  
Medicaid Director  
1311#080

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Health and Hospitals Bureau of Health Services Financing

Inpatient Hospital Services  
State Hospitals  
Reimbursement Rate Reductions  
(LAC 50:V.551)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:V.551 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for inpatient hospital services to provide a supplemental Medicaid payment to state-owned acute care hospitals that meet the qualifying criteria, and to adjust the reimbursement paid to non-qualifying state-owned acute care hospitals (*Louisiana Register*, Volume 38, Number 5).

In anticipation of a budgetary shortfall in state fiscal year 2013 as a result of the reduction in the state's disaster recovery Federal Medical Assistance Percentage (FMAP) rate, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for inpatient hospital services to reduce the reimbursement rates paid to state-owned hospitals (*Louisiana Register*, Volume 38, Number 8). This proposed Rule is being promulgated to continue the provisions of the August 1, 2012 Emergency Rule.

#### Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part V. Hospital Services

##### Subpart 1. Inpatient Hospital Services

##### Chapter 5. State Hospitals

##### Subchapter B. Reimbursement Methodology

##### §551. Acute Care Hospitals

A. - D. ...

E. Effective for dates of service on or after August 1, 2012, the inpatient per diem rate paid to state-owned acute care hospitals, excluding Villa Feliciana and inpatient psychiatric services, shall be reduced by 10 percent of the per diem rate on file as of July 31, 2012.

1. The Medicaid payments to state-owned hospitals that qualify for the supplemental payments, excluding Villa Feliciana and inpatient psychiatric services, shall be reimbursed at 90 percent of allowable costs and shall not be subject to per discharge or per diem limits.

2. The Medicaid payments to state-owned hospitals that do not qualify for the supplemental payments shall be reimbursed at 54 percent of allowable costs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:1241 (May 2012), amended LR 40:

## Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule may have an adverse impact on family functioning, stability and autonomy as described in R.S. 49:972 in the event that provider participation in the Medicaid Program is diminished as a result of reduced reimbursement rates.

## Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule may have an adverse impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973 in the event that health care assistance is reduced as a result of diminished provider participation.

## Public Comments

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this proposed Rule. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

## Public Hearing

A public hearing on this proposed Rule is scheduled for Monday, December 30, 2013 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing.

Kathy H. Kliebert  
Secretary

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

### RULE TITLE: Inpatient Hospital Services

### State Hospitals—Reimbursement Rate Reductions

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that the implementation of this proposed rule will result in estimated state general fund programmatic savings of \$3,909,521 for FY 13-14, \$4,187,881 for FY 14-15 and \$4,337,034 for FY 15-16. It is anticipated that \$328 (\$164 SGF and \$164 FED) will be expended in FY 13-14 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 61.48 percent in FY 14-15. The enhanced rate of 62.11 percent for the last nine months of FY 14 is the federal rate for disaster-recovery FMAP adjustment states.

#### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will reduce federal revenue collections by approximately \$6,645,456 for FY 13-14, \$6,684,084 for FY 14-15 and \$6,861,090 for FY 15-16. It is anticipated that \$164 will be expended in FY 13-14 for the federal administrative expenses

for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 61.48 percent in FY 14-15. The enhanced rate of 62.11 percent for the last nine months of FY 14 is the federal rate for disaster-recovery FMAP adjustment states.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed Rule is being promulgated to continue the provisions of the August 1, 2012 Emergency Rule which amended the provisions governing the reimbursement methodology for inpatient hospital services to reduce the reimbursement rates paid to state-owned hospitals. It is anticipated that implementation of this proposed rule will reduce program expenditures in the Medicaid Program by approximately \$10,555,305 for FY 13-14, \$10,871,965 for FY 14-15 and \$11,198,124 for FY 15-16.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this proposed rule will not have an effect on competition. However, it is anticipated that the implementation of this proposed rule may have a negative effect on employment as it will reduce the payments made for inpatient hospital services. The reduction in payments may adversely impact the financial standing of providers and could possibly cause a reduction in employment opportunities.

J. Ruth Kennedy  
Medicaid Director  
1311#081

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Bureau of Health Services Financing**

Outpatient Hospital Services  
Non-Rural, Non-State Hospitals  
and Children's Specialty Hospitals  
Reimbursement Rate Reductions  
(LAC:V.5313, 5317, 5513, 5517,  
5713, 5719, 6115 and 6119)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:V.5313, §5317, §5513, §5517, §5713, §5719, §6115 and §6119 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for outpatient hospital services to reduce the reimbursement rates paid to non-rural, non-state hospitals and children's specialty hospitals (*Louisiana Register*, Volume 37, Number 11).

In anticipation of a budgetary shortfall in state fiscal year 2013 as a result of the reduction in the state's disaster recovery Federal Medical Assistance Percentage (FMAP) rate, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for outpatient hospital services to reduce the reimbursement rates paid to non-rural, non-state hospitals

and children's specialty hospitals (*Louisiana Register*, Volume 38, Number 8).

Due to a continuing budgetary shortfall, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for outpatient hospital services to further reduce the reimbursement rates paid to non-rural, non-state hospitals (*Louisiana Register*, Volume 39, Number 1). This proposed Rule is being promulgated to continue the provisions of the August 1, 2012 and February 1, 2013 Emergency Rules.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part V. Hospitals**

**Subpart 5. Outpatient Hospitals**

**Chapter 53. Outpatient Surgery**

**Subchapter B. Reimbursement Methodology**

**§5313. Non-Rural, Non-State Hospitals**

A. - F.1. ...

G. Effective for dates of service on or after August 1, 2012, the reimbursement rates paid to non-rural, non-state hospitals for outpatient surgery shall be reduced by 3.7 percent of the fee schedule on file as of July 31, 2012.

H. Effective for dates of service on or after February 1, 2013, the reimbursement rates paid to non-rural, non-state hospitals for outpatient surgery shall be reduced by 1 percent of the fee schedule on file as of January 31, 2013.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1900 (September 2009), amended LR 36:1250 (June 2010), amended LR 36:1250 (June 2010), LR 36:2041 (September 2010), LR 37:3266 (November 2011), LR 40:

**§5317. Children's Specialty Hospitals**

A. - D.1....

E. Effective for dates of service on or after August 1, 2012, the reimbursement rates paid to children's specialty hospitals for outpatient surgery shall be reduced by 3.7 percent of the fee schedule on file as of July 31, 2012.

F. Effective for dates of service on or after February 1, 2013, the reimbursement rates paid to children's specialty hospitals for outpatient surgery shall be reduced by 1 percent of the fee schedule on file as of January 31, 2013.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2042 (September 2010), amended LR 37:3266 (November 2011), LR 40:

**Chapter 55. Clinic Services**

**Subchapter B. Reimbursement Methodology**

**§5513. Non-Rural, Non-State Hospitals**

A. - F.1. ...

G. Effective for dates of service on or after August 1, 2012, the reimbursement rates paid to non-rural, non-state hospitals for outpatient clinic services shall be reduced by 3.7 percent of the fee schedule on file as of July 31, 2012.

H. Effective for dates of service on or after February 1, 2013, the reimbursement rates paid to non-rural, non-state hospitals for outpatient clinic services shall be reduced by 1 percent of the fee schedule on file as of January 31, 2013.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Service Financing, LR 35:1900 (September 2009), amended LR 36:1250 (June 2010), amended LR 36:1250 (June 2010), LR 36:2042 (September 2010), LR 37:3266 (November 2011), LR 40:

#### **§5517. Children's Specialty Hospitals**

A. - D. ...

E. Effective for dates of service on or after August 1, 2012, the reimbursement rates paid to children's specialty hospitals for outpatient hospital clinic services shall be reduced by 3.7 percent of the fee schedule on file as of July 31, 2012.

F. Effective for dates of service on or after February 1, 2013, the reimbursement rates paid to children's specialty hospitals for outpatient hospital clinic services shall be reduced by 1 percent of the fee schedule on file as of January 31, 2013.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2042 (September 2010), amended LR 37:3266 (November 2011), LR 40:

### **Chapter 57. Laboratory Services**

#### **Subchapter B. Reimbursement Methodology**

##### **§5713. Non-Rural, Non-State Hospitals**

A. - F.1. ...

G. Effective for dates of service on or after August 1, 2012, the reimbursement rates paid to non-rural, non-state hospitals for outpatient laboratory services shall be reduced by 3.7 percent of the fee schedule on file as of July 31, 2012.

H. Effective for dates of service on or after February 1, 2013, the reimbursement rates paid to non-rural, non-state hospitals for outpatient laboratory services shall be reduced by 1 percent of the fee schedule on file as of January 31, 2013.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Service Financing, LR 35:1900 (September 2009), amended LR 36:1250 (June 2010), amended LR 36:1250 (June 2010), LR 36:2042 (September 2010), LR 37:3266 (November 2011), LR 40:

##### **§5719. Children's Specialty Hospitals**

A. - D. ...

E. Effective for dates of service on or after August 1, 2012, the reimbursement rates paid to children's specialty hospitals for outpatient clinical diagnostic laboratory services shall be reduced by 3.7 percent of the fee schedule on file as of July 31, 2012.

F. Effective for dates of service on or after February 1, 2013, the reimbursement rates paid to children's specialty hospitals for outpatient clinical diagnostic laboratory services shall be reduced by 1 percent of the fee schedule on file as of January 31, 2013.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2043 (September 2010), amended LR 37:3267 (November 2011), LR 40:

### **Chapter 61. Other Outpatient Hospital Services**

#### **Subchapter B. Reimbursement Methodology**

##### **§6115. Non-Rural, Non-State Hospitals**

A. - F.1. ...

G. Effective for dates of service on or after August 1, 2012, the reimbursement rates paid to non-rural, non-state hospitals for outpatient hospital services other than clinical diagnostic laboratory services, outpatient surgeries, rehabilitation services and outpatient hospital facility fees shall be reduced by 3.7 percent of the rates in effect on July 31, 2012. Final reimbursement shall be at 67.13 percent of allowable cost through the cost settlement process.

H. Effective for dates of service on or after February 1, 2013, the reimbursement rates paid to non-rural, non-state hospitals for outpatient hospital services other than clinical diagnostic laboratory services, outpatient surgeries, rehabilitation services and outpatient hospital facility fees shall be reduced by 1 percent of the rates in effect on January 31, 2013. Final reimbursement shall be at 66.46 percent of allowable cost through the cost settlement process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Service Financing, LR 35:1900 (September 2009), amended LR 36:1250 (June 2010), amended LR 36:1250 (June 2010), amended LR 36:2043 (September 2010), LR 37:3267 (November 2011), LR 40:

##### **§6119. Children's Specialty Hospitals**

A. - D.1. ...

E. Effective for dates of service on or after August 1, 2012, the reimbursement fees paid to children's specialty hospitals for outpatient hospital services other than rehabilitation services and outpatient hospital facility fees shall be reduced by 3.7 percent of the rates in effect on July 31, 2012. Final reimbursement shall be 82.96 percent of allowable cost as calculated through the cost report settlement process.

F. Effective for dates of service on or after February 1, 2013, the reimbursement fees paid to children's specialty hospitals for outpatient hospital services other than rehabilitation services and outpatient hospital facility fees shall be reduced by 1 percent of the rates in effect on January 31, 2013. Final reimbursement shall be 82.13 percent of allowable cost as calculated through the cost report settlement process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2044 (September 2010), amended LR 37:3267 (November 2011), LR 40:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

#### **Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that

this proposed Rule may have an adverse impact on family functioning, stability and autonomy as described in R.S. 49:972 in the event that provider participation in the Medicaid Program is diminished as a result of reduced reimbursement rates.

#### **Poverty Impact Statement**

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule may have an adverse impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973 in the event that health care assistance is reduced as a result of diminished provider participation due to the reimbursement rate reductions.

#### **Public Comments**

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this proposed Rule. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

#### **Public Hearing**

A public hearing on this proposed Rule is scheduled for Monday, December 30, 2013 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing.

Kathy H. Kliebert  
Secretary

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

#### **RULE TITLE: Outpatient Hospital Services Non-Rural, Non-State Hospitals and Children's Specialty Hospitals, Reimbursement Rate Reductions**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that the implementation of this proposed rule will result in estimated state general fund programmatic savings of \$2,768,485 for FY 13-14, \$2,965,917 for FY 14-15 and \$3,071,550 for FY 15-16. It is anticipated that \$820 (\$410 SGF and \$410 FED) will be expended in FY 13-14 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 61.48 percent in FY 14-15. The enhanced rate of 62.11 percent for the last nine months of FY 14 is the federal rate for disaster-recovery FMAP adjustment states.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

It is anticipated that the implementation of this proposed rule will reduce federal revenue collections by approximately \$4,706,114 for FY 13-14, \$4,733,764 for FY 14-15 and \$4,859,122 for FY 15-16. It is anticipated that \$410 will be expended in FY 13-14 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 61.48 percent in FY 14-15. The enhanced rate of 62.11 percent for the last

nine months of FY 14 is the federal rate for disaster-recovery FMAP adjustment states.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

This proposed rule continues the provisions of the August 1, 2012 and February 1, 2013, Emergency Rules which amended the provisions governing the reimbursement methodology for outpatient hospital services to reduce the reimbursement rates. It is anticipated that implementation of this proposed rule will reduce program expenditures in the Medicaid Program by approximately \$7,475,419 for FY 13-14, \$7,699,681 for FY 14-15 and \$7,930,672 for FY 15-16.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

It is anticipated that the implementation of this proposed rule will not have an effect on competition. However, it is anticipated that the implementation of this proposed rule may have a negative effect on employment as it will reduce the payments made for outpatient hospital services. The reduction in payments may adversely impact the financial standing of providers and could possibly cause a reduction in employment opportunities.

J. Ruth Kennedy  
Medicaid Director  
1311#082

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

### **NOTICE OF INTENT**

#### **Department of Health and Hospitals Bureau of Health Services Financing**

Outpatient Hospital Services  
State-Owned Hospitals  
Reimbursement Rate Reduction  
(LAC 50:V.5319, 5519, 5715 and 6127)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:V.5319, §5519, §5715, and §6127 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for outpatient hospital services in order to continue medical education payments to state-owned hospitals when the hospitals are reimbursed by prepaid risk-bearing managed care organizations for outpatient surgeries, clinic services, rehabilitation services, and other covered outpatient hospital services (*Louisiana Register*, Volume 38, Number 2). The February 10, 2012 Emergency Rule was amended to clarify the provisions governing the reimbursement methodology for outpatient hospital services (*Louisiana Register*, Volume 38, Number 3).

In anticipation of a budgetary shortfall in state fiscal year 2013 as a result of the reduction in the state's disaster recovery Federal Medical Assistance Percentage (FMAP) rate, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for outpatient hospital services to reduce the reimbursement rates paid to state-owned hospitals

(*Louisiana Register*, Volume 38, Number 8). This proposed Rule is being promulgated to continue the provisions of the August 1, 2012 Emergency Rule.

#### **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part V. Hospital Services**

#### **Subpart 5. Outpatient Hospitals**

#### **Chapter 53. Outpatient Surgery**

#### **Subchapter B. Reimbursement Methodology**

#### **§5319. State-Owned Hospitals**

A. - A.2. ...

B. Effective for dates of service on or after August 1, 2012, the reimbursement rates paid to state-owned hospitals for outpatient surgery shall be reduced by 10 percent of the fee schedule on file as of July 31, 2012.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Service Financing, LR 38:2773 (November 2012), amended LR 40:

#### **Chapter 55. Clinic Services**

#### **Subchapter B. Reimbursement Methodology**

#### **§5519. State-Owned Hospitals**

A. - A.2. ...

B. Effective for dates of service on or after August 1, 2012, the reimbursement rates paid to state-owned hospitals for outpatient clinic services shall be reduced by 10 percent of the fee schedule on file as of July 31, 2012.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:2774 (November 2012), amended LR 40:

#### **Chapter 57. Laboratory Services**

#### **Subchapter B. Reimbursement Methodology**

#### **§5715. State-Owned Hospitals**

A. ...

B. Effective for dates of service on or after August 1, 2012, the reimbursement rates paid to state-owned hospitals for outpatient laboratory services shall be reduced by 10 percent of the fee schedule on file as of July 31, 2012.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Service Financing, LR 35:956 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

#### **Chapter 61. Other Outpatient Hospital Services**

#### **Subchapter B. Reimbursement Methodology**

#### **§6127. State-Owned Hospitals**

A. - B.2. ...

C. Effective for dates of service on or after August 1, 2012, the reimbursement rates paid to state hospitals for outpatient hospital services other than clinical diagnostic laboratory services, outpatient surgeries, rehabilitation services and outpatient hospital facility fees shall be reduced by 10 percent of the rates in effect on July 31, 2012. Final reimbursement shall be at 90 percent of allowable cost through the cost settlement process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health

Services Financing, LR 35:957 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:2774 (November 2012), LR 40:

#### **Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule may have an adverse impact on family functioning, stability and autonomy as described in R.S. 49:972 in the event that provider participation in the Medicaid Program is diminished as a result of reduced reimbursement rates.

#### **Poverty Impact Statement**

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule may have an adverse impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973 in the event that health care assistance is reduced as a result of diminished provider participation.

#### **Public Comments**

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this proposed Rule. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

#### **Public Hearing**

A public hearing on this proposed Rule is scheduled for Monday, December 30, 2013 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing.

Kathy H. Kliebert  
Secretary

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

#### **RULE TITLE: Outpatient Hospital Services State-Owned Hospitals Reimbursement Rate Reduction**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that the implementation of this proposed rule will result in estimated state general fund programmatic savings of \$2,573,014 for FY 13-14, \$2,756,362 for FY 14-15 and \$2,854,530 for FY 15-16. It is anticipated that \$492 (\$246 SGF and \$246 FED) will be expended in FY 13-14 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 61.48 percent in FY 14-15. The enhanced rate of 62.11 percent for the last nine months of FY 14 is the federal rate for disaster-recovery FMAP adjustment states.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

It is anticipated that the implementation of this proposed rule will reduce federal revenue collections by approximately \$4,373,741 for FY 13-14, \$4,399,302 for FY 14-15 and \$4,515,804 for FY 15-16. It is anticipated that \$492 will be expended in FY 13-14 for the federal administrative expenses

for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 61.48 percent in FY 14-15. The enhanced rate of 62.11 percent for the last nine months of FY 14 is the federal rate for disaster-recovery FMAP adjustment states.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed Rule is being promulgated to continue the provisions of the August 1, 2012 Emergency Rule which amended the provisions governing the reimbursement methodology for outpatient hospital services to reduce the reimbursement rates paid to state-owned hospitals. It is anticipated that implementation of this proposed rule will reduce program expenditures in the Medicaid Program by approximately \$6,947,247 for FY 13-14, \$7,155,664 for FY 14-15 and \$7,370,334 for FY 15-16.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this proposed rule will not have an effect on competition. However, it is anticipated that the implementation of this proposed rule may have a negative effect on employment as it will reduce the payments made for outpatient hospital services. The reduction in payments may adversely impact the financial standing of providers and could possibly cause a reduction in employment opportunities.

J. Ruth Kennedy  
Medicaid Director  
1311#083

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Bureau of Health Services Financing**

Professional Services Program  
Fluoride Varnish Applications  
(LAC 50:IX.Chapter 9 and 15105)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to adopt LAC 50:IX.Chapter 9 and §15105 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing the Professional Services Program in order to establish Medicaid reimbursement for fluoride varnish application services rendered by qualified providers in a physician office setting (*Louisiana Register*, Volume 37, Number 11). The department anticipates that coverage of this service will reduce and/or prevent future oral health problems that could have a negative effect on the overall health of children and may reduce the Medicaid cost associated with the treatment of such oral health conditions.

The department promulgated an Emergency Rule which amended the December 1, 2011 Emergency Rule to clarify the general provisions and scope of services governing fluoride varnish applications (*Louisiana Register*, Volume

38, Number 1). This proposed Rule is being promulgated to continue the provisions of the January 20, 2012 Emergency Rule.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part IX. Professional Services Program**

**Subpart 1. General Provisions**

**Chapter 9. Fluoride Varnish Application Services**

**§901. General Provisions**

A. Effective for dates of service on or after December 1, 2011, the department shall provide Medicaid coverage of fluoride varnish application services to recipients from six months through five years of age.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

**§903. Scope of Services**

A. Fluoride varnish application services performed in a physician office setting shall be reimbursed by the Medicaid Program when rendered by the appropriate professional services providers.

B. Fluoride varnish applications may be covered once every six months per Medicaid recipient.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

**§905. Provider Participation**

A. The entity seeking reimbursement for fluoride varnish application services must be an enrolled Medicaid provider in the Professional Services Program. The following Medicaid enrolled providers may receive reimbursement for fluoride varnish applications:

1. physicians;
2. nurse practitioners; and
3. physician assistants.

B. The following providers who have been deemed as competent to perform the service by the certified physician may perform fluoride varnish application services in a physician office setting:

1. the appropriate dental providers;
2. physicians;
3. physician assistants;
4. nurse practitioners;
5. registered nurses; or
6. licensed practical nurses.

C. Professional service providers shall review the Smiles for Life training module for fluoride varnish and successfully pass the post assessment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

**Subpart 15. Reimbursement**

**Chapter 151. Reimbursement Methodology**

**Subchapter A. General Provisions**

**§15105. Fluoride Varnish Application Services**

A. Effective for dates of service on or after December 1, 2011, the Medicaid Program shall provide reimbursement for fluoride varnish application services rendered by qualified health care professionals in a physician office setting.

B. Reimbursement for fluoride varnish application services shall be a flat fee based on the appropriate HCPCS code.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

**Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability and autonomy as described in R.S. 49:972 as it will improve health outcomes and reduce the occurrence of future dental disease.

**Poverty Impact Statement**

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have a positive impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973 as it is expected to reduce the costs associated with the treatment of dental disease which will ease the financial burden on families.

**Public Comments**

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this proposed Rule. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

**Public Hearing**

A public hearing on this proposed Rule is scheduled for Monday, December 30, 2013 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing.

Kathy H. Kliebert  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Professional Services Program  
Fluoride Varnish Applications**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO  
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that the implementation of this proposed Rule will result in estimated state programmatic costs of \$57,256 for FY 13-14, \$61,111 for FY 14-15 and \$63,287 for FY 15-16. It is anticipated that \$410 (\$205 SGF and \$205 FED) will be expended in FY 13-14 for the state's administrative expense for promulgation of this proposed Rule and the final Rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 61.48 percent in FY 14-15. The enhanced rate of 62.11 percent for the last nine months of FY 14 is the federal rate for disaster-recovery FMAP adjustment states.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE  
OR LOCAL GOVERNMENTAL UNITS (Summary)**

It is anticipated that the implementation of this proposed Rule will increase federal revenue collections by approximately \$97,180 for FY 13-14, \$97,536 for FY 14-15 and \$100,119 for FY 15-16. It is anticipated that \$205 will be expended in FY 13-14 for the federal administrative expenses for promulgation of this proposed Rule and the final Rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 61.48 percent in FY 14-15. The enhanced rate of 62.11 percent for the last nine months of FY 14 is the federal rate for disaster-recovery FMAP adjustment states.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO  
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL  
GROUPS (Summary)**

This proposed Rule continues the provisions of the January 20, 2012 Emergency Rule and amends the provisions governing the Professional Services Program in order to establish Medicaid reimbursement for fluoride varnish application services rendered by qualified providers in a physician office setting. It is anticipated that implementation of this proposed Rule will increase program expenditures in the Professional Services Program by approximately \$154,026 for FY 13-14, \$158,647 for FY 14-15 and \$163,406 for FY 15-16.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT  
(Summary)**

It is anticipated that the implementation of this proposed Rule will have no effect on competition and employment.

J. Ruth Kennedy  
Medicaid Director  
1311#084

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Public Safety and Corrections  
Office of Motor Vehicles**

Public Tag Agents (LAC 55:I.1575)

In accordance with the provisions of R.S. 47:532.1, relative to the authority of the Office of Motor Vehicles, the Office of Motor Vehicles hereby proposes to amend LAC 55:III.1575, to further clarify the requirements for a public tag agent to be authorized to issue driver's licenses and identification cards on behalf of the Office of Motor Vehicles.

**Title 55  
PUBLIC SAFETY**

**Part III. Motor Vehicles**

**Chapter 15. Services Provided by Persons and  
Business Entities**

**Subchapter B. Public Tag Agents  
§1575. Driver's License Issuance**

A. A public tag agent may contract with the department to administer the necessary tests and issue or renew identification cards, handicap hang tag identification cards, and driver's licenses. The written knowledge test and the driving or skills test shall be administered in accordance with the provisions of LAC 55:III.Chapter 1.Subchapter C.

B. The public tag agent's third party examiner shall utilize only department approved visual screening equipment. In lieu thereof, each examiner may opt to utilize the standard Snellen wall-chart for visual acuity. The visual

acuity testing shall be administered in manner approved by the department.

C. A public tag agent shall develop controls to secure the materials and equipment necessary to issue driver's licenses. Such controls shall be submitted in writing to the department. A public tag agent shall not issue any driver's licenses until the controls required by this Section have been approved by the department in writing. Once approved, the controls shall be implemented as written. Any changes to the control approved by the department shall be approved in writing prior to implementation.

D. The department shall designate the types of driver's license and identification card transactions a public tag agent may perform, such as renewals and duplicates. Such designation shall be at the sole discretion of the department. Identification cards include the photographic identification issued with a handicap hangtag.

E. Qualifications for Issuance of Driver's Licenses and Identification Cards. In addition to the qualification requirements contained in statute and this Chapter, a public tag agent shall meet these additional requirements in order to be approved to perform driver's license and identification card transaction designated by the department.

1. Insurance. The insurance policy shall provide coverage and a defense for the state of Louisiana and the Department of Public Safety and Corrections, as well as the employees of the state and the department.

a. A policy for professional liability/errors and omissions with minimum coverage of \$1,000,000.

b. A policy for general liability with minimum coverage of \$1,000,000.

2. A security system installed by a company licensed and approved by the Office of State Fire Marshal. This system shall be monitored 24 hours a day by a monitoring company.

3. A video surveillance system which at a minimum monitors all entrances, the driver's license camera station, and the secure supply room. Such system shall be installed by a company licensed and approved by the Office of State Fire Marshal. The video images shall be retained by the system for a minimum of 30 days with the ability to save the video indefinitely if so requested by the department.

F. Camera Station

1. The public tag agent shall purchase the camera station from the current vendor providing the credential issuance solution for the department. The public shall receive prior approval from the department before purchasing the camera station.

2. A public tag agent may only dispose of a camera station in a manner approved by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:532.1.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 27:1927 (November 2001), amended LR 40:

#### **Family Impact Statement**

The proposed Rule will not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. Specifically there should be no known or foreseeable effect on:

1. the stability of the family;

2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of the children.

#### **Poverty Impact Statement**

The proposed Rule amends LAC 55:III.325. These rule changes should not have any known or foreseeable impact on any child, individual or family as defined by R.S. 49:973(B). In particular, there should be no known or foreseeable effect on:

1. the effect on household income, assets, and financial security;
2. the effect on early childhood development and preschool through postsecondary education development;
3. the effect on employment and workforce development;
4. the effect on taxes and tax credits;
5. the effect on child and dependent care, housing, healthcare, nutrition, transportation, and utilities assistance.

#### **Small Business Statement**

The impact of the proposed Rule on small businesses has been considered and it is estimated that the proposed action is not expected to have a significant adverse impact on small businesses as defined in the Regulatory Flexibility Act. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

#### **Public Comments**

All interested persons are invited to submit written comments on the proposed regulations. Such comments should be submitted no later than the close of business, December 16, 2013, at 4:30 p.m. to Stephen A. Quidd, P.O. Box 66614, Baton Rouge, LA 70896, (225) 925-6103, fax (225) 925-3974, or [stephen.quidd@la.gov](mailto:stephen.quidd@la.gov).

#### **Public Hearing**

A public hearing is scheduled for December 27, 2013 at 10 a.m. at 7979 Independence Blvd., Suite 301, Baton Rouge, LA 70806. Please call in advance to confirm the time and place of meeting, as the meeting will be cancelled if the requisite number of comments is not received.

Jill P. Boudreaux  
Undersecretary

#### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Public Tag Agents**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed Rule change will have no impact on state government expenditures. However, the proposed Rule change would impact local governmental units in the event the locality becomes a public tag agent (PTA) to perform vehicle and driver's license transactions. The costs would include the purchase of liability insurance and a security and video surveillance system. Currently, there are no local governmental entities that are PTAs.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no anticipated effect on revenue collections of state governmental units as a result of this proposed Rule change. However, local governmental units may increase revenue collections as a result of becoming PTAs. To the extent a local government unit elects to become a PTA for driver's license issuance, as authorized by R.S. 47:532.1, their revenue will be based upon the convenience fee the local government unit charges its customers. The convenience fee of up to \$18, authorized by R.S. 47:532.1, is charged to the customer and collected by PTAs.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Those individuals who choose to use a public tag agent to renew their driver's license will pay an additional convenience fee to the PTA in an amount not to exceed \$18. Each PTA determines the exact amount of the convenience fee they charge per transaction.

For private entities that become PTAs, each entity issuing driver's licenses will have to acquire the equipment necessary for driver's license issuance from OMV's vendor at the PTA's cost. The private entity will also have to purchase liability insurance as required in the proposed Rule change.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed Rule changes may affect competition and employment to the extent a local governmental entity and private entity become PTAs in the same locality or parish. Currently, there is only one pilot program operated by a private entity.

Jill P. Boudreaux  
Undersecretary  
1311#092

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Public Safety and Corrections  
Office of State Police**

Motor Carrier Safety Revision Date and Weight  
(LAC 33:V.10303 and 10309)

The Department of Public Safety and Corrections, Office of State Police, in accordance with R.S. 49:950 et seq., and R.S. 32:1501 et seq., gives notice of its intent to amend its Rules regulating motor carrier safety and hazardous materials by updating the revision date of the adopted federal motor carrier regulations to October 1, 2013 and by deleting rules which were repealed by statute.

**Title 33**

**ENVIRONMENTAL QUALITY**

**Part V. Hazardous Wastes and Hazardous Materials**

**Subpart 2. Department of Public Safety and Corrections—Hazardous Materials**

**Chapter 103. Motor Carrier Safety and Hazardous Materials**

**§10303. Federal Motor Carrier Safety and Hazardous Materials**

A. The following federal motor carrier safety regulations and hazardous materials regulations promulgated by the United States Department of Transportation, revised as of October 1, 2013, and contained in the following parts of 49

CFR as now in effect or as hereafter amended, are made a part of this Chapter.

<b>Hazardous Material Regulations</b>	
Part 107	Hazardous Materials Program Procedures
Part 171	General Information, Regulations, and Definitions
Part 172	Hazardous Materials Table, Special Provisions, and Hazardous Materials Communications, Emergency Response Information, and Training Requirements
Part 173	Shippers—General Requirements for Shipments and Packagings
Part 177	Carriage by Public Highways
Part 178	Specifications for Packagings
Part 180	Continuing Qualification and Maintenance of Packagings

<b>Motor Carrier Safety Regulations</b>	
Part 355	Compatibility of State Laws and Regulations Affecting Interstate Motor Carrier Operations
Part 360	Fees for Motor Carrier Registration and Insurance
Part 365	Rules Governing Applications for Operating Authority
Part 367	Standards for Registration with States
Part 373	Receipts and Bills
Part 374	Passenger Carrier Regulations
Part 375	Transportation of Household Goods in Interstate Commerce: Consumer Protection Regulations
Part 376	Lease and Interchange of Vehicles
Part 379	Preservation of Records
Part 382	Controlled Substances and Alcohol Use and Testing
Part 383	Commercial Driver's License Standards; Requirements and Penalties
Part 384	State Compliance with Commercial Driver's License Program
Part 385	Safety Fitness Procedures
Part 386	Rules of Practice for Motor Carrier, Broker, Freight Forwarder and Hazardous Materials Proceedings
Part 387	Minimum Levels of Financial Responsibility for Motor Carriers
Part 388	Cooperative Agreements with States
Part 389	Rulemaking Procedures-Federal Motor Carrier Safety
Part 390	Federal Motor Carrier Safety Regulations; General
Part 391	Qualifications of Drivers
Part 392	Driving of Commercial Motor Vehicles
Part 393	Parts and Accessories Necessary for Safe Operation
Part 395	Hours of Service of Drivers
Part 396	Inspection, Repair, and Maintenance
Part 397	Transportation of Hazardous Materials; Driving and Parking Rules

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 32:1501 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 14:31 (January 1988), amended LR 17:1115 (November 1991), LR 19:351 (March 1993), LR 20:58 (January 1994), LR 24:956 (May 1998), LR 24:2321 (December 1998), LR 29:711 (May 2003), LR 30:447 (March 2004), LR 32:641 (April 2006), LR 34:882 (May 2008), amended by the Department of Public Safety and Corrections, Office of State Police, Transportation and Environmental Safety Section, LR 37:1613 (June 2011), LR 38:1417 (June 2012), amended by the Department of Public Safety and Corrections, Office of State Police, LR 40:

**§10309. Recovery of Civil Penalties**

A. To enforce the collection of a civil penalty levied after due process upon a person determined by the secretary of the Department of Public Safety and Corrections to have committed an act that is a violation of R.S. 32:1501 et seq., or adopted or promulgated regulations as provided in this Chapter, the secretary shall act in accordance with the provisions of R.S. 32:1525.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 14:31 (January 1988), amended LR 14:488 (July 1988), LR 17:1116 (November 1991), LR 40:

#### **Family Impact Statement**

1. The effect of these rules on the stability of the family. These rules should not have any effect on the stability of the family.

2. The effect of these rules on the authority and rights of parents regarding the education and supervision of their children. These rules should not have any effect on the authority and rights of parents regarding the education and supervision of their children.

3. The effect of these rules on the functioning of the family. These rules should not have any effect on the functioning of the family.

4. The effect of these rules on family earnings and family budget. These rules should not have any effect on family earnings and family budget.

5. The effect of these rules on the behavior and personal responsibility of children. These rules should not have any effect on the behavior and personal responsibility of children.

6. The effect of these rules on the ability of the family or local government to perform the function as contained in the proposed rules. These rules should not have any effect on the ability of the family or local government to perform the function as contained in the proposed rules.

#### **Poverty Impact Statement**

The impact of the proposed Rule on child, individual, or family poverty has been considered and it is estimated that the proposed action is not expected to have a significant adverse impact on poverty in relation to individual or community asset development as provided in the R.S. 49:973.

The agency has considered economic welfare factors and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on poverty.

#### **Small Business Statement**

The impact of the proposed Rule on small businesses has been considered and it is estimated that the proposed action is not expected to have a significant adverse impact on small businesses as defined in the Regulatory Flexibility Act.

The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

#### **Public Comments**

Interested persons may submit written comments to Paul Schexnayder, P.O. Box 66614, Baton Rouge, LA 70896. Writttten comments will be accepted through December 15, 2013.

Jill P. Boudreaux  
Undersecretary

## **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

### **RULE TITLE: Motor Carrier Safety Revision Date and Weight**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed Rule change is not anticipated to result in state or local government costs or savings. The proposed Rule updates the revision date of adopted federal motor carrier regulations and eliminates regulations that are now defined in statute. The statute provides procedures regarding notifications of motor carrier violations and administration of violations.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There is no anticipated direct material effect on revenue collections of state or local governmental units as a result of this proposed Rule change.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

There are no anticipated costs or economic benefits to any person or group, as a result of this Rule change.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed Rule change will have no effect on competition and employment.

Jill P. Boudreaux  
Undersecretary  
1311#043

John D. Carpenter  
Legislative Fiscal Officer  
Legislative Fiscal Office

### **NOTICE OF INTENT**

#### **Department of State Elections Division**

#### **Sale of Voter Registration Lists (LAC 31:II.105)**

Pursuant to the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and under the authority of R.S. 18:31 and R.S. 36:742, the secretary of state hereby gives notice of his intent to amend LAC 31:II.105 with regard to the sale of voter registration lists.

#### **Title 31**

#### **ELECTIONS**

#### **Part II. Voter Registration and Voter Education**

#### **Chapter 1. Registrars of Voters**

#### **§105. Sale of Voter Registration Lists**

A. The Department of State generates voter registration lists through ERIN and establishes guidelines that shall be provided to the registrars of voters for the sale of voter registration lists to the general public.

B. Voter registration lists can either be requested through the department's website [www.GeauxVote.com](http://www.GeauxVote.com) or through a registrar of voters' office. All lists must be paid for in advance based upon an estimate provided by either the department or registrar of voters to the client. All estimates will be signed by the client, unless the estimate is submitted electronically. Checks, money orders and credit cards are the acceptable forms of payment. Payment shall either be given to the department or the registrar of voters' office. If the registrar of voters' office receives the payment, the registrar

shall fax a copy of the check or money order to the department and mail the check or money order to the department within 48 hours.

C. The department hereby establishes the cost schedules detailed below for the sale of voter registration lists.

1. List of Voter Registrations in PDF Format

Number of Voters	Cost
1-2,000 voters	\$20
2,001 +	\$0.01 x number of voters, not to exceed \$5,000

a. This list can be requested without districts and should contain the following information: parish, registration number, ward, precinct, name, party, age, sex, race, last-vote-date, residence, and mailing addresses. If requested, the list will provide telephone numbers.

b. This list can be requested with districts and should contain the same information above plus the following information: congressional, senatorial, representative, police jury/council, justice of the peace, school board, city district, district court, public service commission, board of elementary and secondary education, tax ward district, and eight special districts. If requested, the list will provide telephone numbers.

c. This list can be ordered for delivery via electronic mail or CD-ROM. Each duplicate copy of the CD-ROM costs one-fourth the cost of the original.

2. Mailing Labels in PDF Format

Number of Voters	Cost
1-2,000 voters	\$20
2,001 +	\$0.01 x number of voters, not to exceed \$5,000

a. Label formatted pdf files may be ordered with the following information:

- i. voter's name and mailing address only; or
- ii. voter's name, mailing address, ward and precinct.

b. The mailing labels in pdf format can be ordered for delivery via electronic mail or CD-ROM. Each duplicate copy of the CD-ROM costs one-fourth the cost of the original.

3. List of Voter Registrations in Text Format

Number of Voters	Cost
1-2,000	\$20
2,001 +	\$0.01 x number of voters, not to exceed \$5,000

a. The data is in text format.

b. The text format list should provide the following information:

- i. parish;
- ii. name;
- iii. ward;
- iv. precinct;
- v. party;
- vi. residence and mailing addresses;
- vii. sex;
- viii. race;
- ix. age;

- x. status;
- xi. registration date;
- xii. registration number;
- xiii. last 20 dates voted; and
- xiv. all district information.

c. If requested, the telephone number will be provided.

d. The text format list can be ordered for delivery via electronic mail or CD-ROM. Each duplicate copy of the CD-ROM costs one-fourth the cost of the original.

4. Delivery. The minimum cost for the delivery service shall be \$7.50 per shipment.

5. Special Requests. The prices above apply to requests using the standard criteria. A \$100 per hour programming charge will be added for any "special request." Registrars of voters must check with the information technology section of the department prior to agreeing to a request that does not conform to the standard criteria.

D. The client shall review the list immediately upon receipt. If there is a problem with the list, the client must immediately notify the department or registrar of voters. If the client has a valid reason for seeking a new list or getting a refund, the client has seven days to return the original voter registration list to the department or registrar of voters to receive a new list or a refund. If the original list has been reproduced, no refund will be issued and a new list will be subject to the appropriate costs. If the list was delivered via electronic mail, the list must be deleted prior to receiving a new list or getting a refund. If the reasoning is determined to be justifiable by the department, a new list will be provided or a refund issued.

E. Notwithstanding any provision of this Section to the contrary, a statewide voter registration list may be available electronically to the state chair of a political party recognized pursuant to R.S. 18:441 from the department by subscription agreement. Such statewide voter registration list shall be transmitted electronically on a quarterly basis at a subscription rate of \$7,500 per year payable to the Department of State.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:18, R.S. 18:31, 18:441 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 34:704 (April 2008), amended LR 40:

**Family Impact Statement**

The proposed amendment to §105 of the Rule, LAC 31:II.Chapter 1, regarding the sale of voter registration lists should not have any known or foreseeable impact on any family as defined by R.S. 49:927 or on family formation, stability and autonomy. Specifically, there should be no known or foreseeable effect on:

- 1. the stability of the family;
- 2. the authority and rights of parents regarding the education and supervision of their children;
- 3. the functioning of the family;
- 4. family earnings and family budget;
- 5. the behavior and personal responsibility of children; and
- 6. the ability of the family or a local government to perform the function as contained in the proposed amendments to the Rule.

**Poverty Impact Statement**

The amendment to §105 of the Rule, LAC 31:II.Chapter 1, regarding the sale of voter registration lists should not have

any known or foreseeable impact on poverty as defined by R.S. 49:973. Specifically, there should be no known or foreseeable effect on:

1. the household income, assets and financial security;
2. early childhood development and preschool through postsecondary education development;
3. employment and workforce development;
4. taxes and tax credits; and
5. child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

#### Small Business Statement

The impact of the proposed amendment to §105 of the Rule, LAC 31:II.Chapter 1, regarding the sale of voter registration lists on small business has been considered and it is estimated that the proposed action is not expected to have a significant adverse impact on small business as defined in the Regulatory Flexibility Act. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small business.

#### Public Comments

Interested persons may submit written comments to Merietta Norton, General Counsel, Department of State, P.O. Box 94125, Baton Rouge, LA 70804-9125. She will be responsible for responding to inquiries regarding the proposed Rule. The deadline for the Department of State to receive written comments is 4:30 p.m. on Tuesday, December 31, 2013 after the public hearing.

#### Public Hearing

A public hearing on the proposed Rule is scheduled for Monday, December 30, 2013 at 10 a.m. in the auditorium at the State Archives Building, 3851 Essen Lane, Baton Rouge, LA. At that time, all interested persons will be afforded the opportunity to submit data, views, or arguments either orally or in writing.

Tom Schedler  
Secretary of State

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

#### RULE TITLE: Sale of Voter Registration Lists

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no estimated implementation costs or savings to the state or local governmental units as a result of the proposed Rule change. The proposed Rule change would eliminate the sale of voter registration lists/labels in print format and would make the sale of voter registration lists/labels available only in PDF format. The proposed Rule also changes the method of payment to include credit cards. The proposed Rule change also offers an optional subscription service for the sale of statewide voter registration lists to recognized political parties (see R.S. 18:44) at a cost of \$7,500 annually.

#### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The estimated effect on state revenues resulting from the proposed Rule change is not known. The number of voter registration lists sold varies each year and is dependent on the type of elections (local/state, regular/special) and the number of

candidates on the ballot. Additionally, the cost to print voter registration lists has increased. Discontinuing the sale of voter registration lists/labels in printed format will result in the loss of approximately \$10,000-\$37,000 revenue to the state annually. The agency is not able to determine the amount of revenue to be generated from the sale of voter registration lists/labels in PDF format. Voter registration lists/labels in PDF format that contain 1-2,000 voters cost \$20. Voter registration lists/labels in PDF format that contain 2,001 or more voters cost \$0.01 per voter, not to exceed \$5,000. It is not known how many recognized political parties would purchase a subscription service that costs \$7,500 per year, rather than purchase voter registration lists on an as needed basis.

The proposed Rule change will not have any estimated effect on revenue collections of local governmental units.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The purchase of voter registration lists/labels in PDF format will cost less than printed copies of such lists. Printed copies of voter registration lists/labels that contain 1-2,000 voters cost \$35, whereas a PDF copy of such lists costs \$20. Printed copies of voter registration lists/labels that contain 2,001 or more voters cost \$0.0175 per voter not to exceed \$5,000, whereas a PDF copy of such lists costs \$0.01 per voter, not to exceed \$5,000. There will be a \$5 charge for each transaction paid with a credit card.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed Rule change is not anticipated to have any effect on competition and employment.

Joe R. Salter  
Undersecretary  
1311#034

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

### NOTICE OF INTENT

#### Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Natural and Scenic River Systems  
(LAC 76:IX.105, 115 and 117)

The Louisiana Wildlife and Fisheries Commission hereby advertises its intent to adopt the following changes to regulations for the natural and scenic river systems.

The secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this Notice of Intent and the final Rule, including, but not limited to, the filing of the Fiscal and Economic Impact Statement, the filing of the Notice of Intent and final Rule and the preparation of reports and correspondence to other agencies of government.

#### Title 76

#### WILDLIFE AND FISHERIES

#### Part IX. Natural and Scenic River Systems

#### Chapter 1. Administration of the Natural and Scenic Rivers and Historic and Scenic Rivers

#### §105. Applicability of These Regulations

A. These regulations shall apply to all uses proposed to be undertaken on the stream or on adjacent lands within 100 feet of a designated system stream by any "person" whether or not concurrence, authorization, or matching funding is provided by any state agency, local governing authority,

political subdivision, or special district of the State of Louisiana, unless restriction of those uses are exempted from regulations pursuant to the provisions of R.S. 56:1852(B). These regulations shall further apply to all activities more than 100 feet from designated system streams that have potential to significantly impact the ecological integrity of a system stream.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:1850 and 56:1852(B).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 2:456 (December 1976), amended by the Department of Wildlife and Fisheries, Office of the Secretary, LR 17:680 (July 1991), amended by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 40:

#### **§115. Prohibited Activities**

A. The following uses of a system river, and all uses functionally related thereto, shall be absolutely prohibited:

1. channelization;
2. clearing and snagging;
3. channel realignment;
4. reservoir construction;
5. commercial cutting or harvesting of trees or timber in violation of the provisions of R.S. 56:1854-;
6. use of a motor vehicle or other wheeled or tracked vehicle on a designated system stream, except for permitted uses, and direct crossings by immediately adjacent landowners, lessees, or other persons who have written permission from the landowner to access adjoining tracts of land, for noncommercial activities in a manner that does not directly and significantly degrade the ecological integrity of the stream. Written permission must be in the person's possession and include the landowner's contact information; and
7. any use requiring a permit where a permit has not been obtained.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:1853.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 2:456 (December 1976), amended by the Department of Wildlife and Fisheries, Office of the Secretary, LR 17:682 (July 1991), amended by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 40:

#### **§117. Permitted Activities**

A. All activities that may detrimentally affect or significantly degrade the wilderness quality, aesthetic values, or the ecological integrity of a system river shall be subject to a permit except:

1. those prohibited uses set forth in §115 of these regulations;
2. normal activities of private landowners within the boundaries of their property as provided by R.S. 56:1852(B); and
3. harvesting of trees in accordance with R.S. 56:1854, provided that prior notification of any commercial harvesting of trees shall be given to the Louisiana Office of Forestry.

B. Activities requiring permits shall include, but not be limited to, the following activities:

1. crossings by roads, bridges, railroads, pipelines or utilities;
2. sharing of land and airspace by such roads, railroads, pipelines and utilities;

3. point source discharge of any pollutant (prior to any person applying to the Department of Environmental Quality for a permit to discharge any pollutant into a system river, the person shall give written notice to the administrator);

4. prospecting, drilling and mining for nonrenewable natural resources;

5. structures and buildings of any kind or size;

6. piers, boat slips, bulkheads and landings;

7. commercial uses, activities and access;

8. commercial signs or other forms of outdoor advertising that are visible from the waters within a natural and scenic river;

9. water withdrawals, except for withdrawals made by an individual, adjacent property owner solely for residential purposes;

10. mooring of houseboats or floating camps on system streams except:

a. when the houseboat or floating camp is moored to a legally permitted piling, pier or bulkhead or moored to trees using connections that do not damage the trees and with the written permission of the owner of the trees. Written permission must be physically on the houseboat or floating camp and include the owner's contact information; and

b. houseboats moored on a System Stream shall have a permit or letter of certification from the Health Unit (Department of Health and Hospitals) of the parish within which the System Stream is located verifying that it has an approved sewerage disposal system on board. Furthermore, all occupants of houseboats and floating camps when on a System Stream must utilize an approved sewerage disposal system.

C. Application. The administrator shall provide an application to any person wishing to apply for a permit. Any person who proposes to make any permitted use of a system river, shall submit one complete original application to the administrator. Any documents larger than 8 1/2" x 14" must be submitted digitally in a department approved digital format. The application shall contain:

1. name, address and telephone numbers of the applicant;

2. names and addresses of adjoining property owners whose property also adjoins the waterway;

3. background information on the proposed use;

4. a detailed description of the proposed use;

5. full description of any portion of the project which is under development or is completed;

6. photographs and maps of the area where the uses would be made;

7. full and thorough evaluation of the use's effect on the criteria listed in Subsection F below;

8. any alternatives to the proposed action;

9. description of steps taken to minimize detrimental effects to the system river, and measures taken to ensure preservation of the system;

10. identification of all authorizing local, state, and Federal agencies and all permits applied for or obtained from such agency; and

11. description of any noncompliance by applicant, adjudicated within Louisiana, regarding the Louisiana Scenic Rivers Act, the United States Wild and Scenic River Act, and all regulations and ordinances pertaining to these acts.

D. - H.3. ...

I. Time Period for Review of the Application. The administrator shall make a decision whether to grant or deny the permit within 30 days after the adjournment of the hearing or the end of the written comment period, whichever is latest.

J. - Q. ...

R. Appeals of Final Decision. Any person who is denied a permit by the department may institute legal proceedings against the department in the Nineteenth Judicial District Court.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:1844, 56:1849, 56:1852 and 56:1854.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 2:456 (December 1976), amended by the Department of Wildlife and Fisheries, Office of the Secretary, LR 17:682 (July 1991), amended by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 40:

**Family Impact Statement**

In accordance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission hereby issues its Family Impact Statement in connection with the preceding Notice of Intent. This Notice of Intent will have no impact on the six criteria set out in R.S. 49:972(B).

**Poverty Impact Statement**

The proposed rulemaking will have no impact on poverty as described in R.S. 49:973.

**Public Comments**

Interested persons may submit written comments of the amended Rule to Louisiana Department of Wildlife and Fisheries, Attn: Keith Cascio, Scenic Rivers Coordinator, P.O. Box 98000, Baton Rouge, LA 70898-9000 no later than 4:30 p.m., December 20, 2013.

Ronald Graham  
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Natural and Scenic River Systems**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed Rule change is expected to decrease costs by approximately \$365 to the Department of Wildlife and Fisheries since it converts the application process to a digital system from the existing paper-based system. Savings are due to a reduction of copy and postage costs.

The proposed Rule change adds language that clarifies the applicability of the Scenic River Act to all activities more than 100 feet from designated streams that may potentially significantly impact the ecological integrity of a system stream.

The proposed Rule change bans the operation of motor vehicles or other wheeled or tracked vehicles within a designated system stream except for certain individuals in certain circumstances.

The proposed Rule change bans any use of a designated stream requiring a permit where a permit has not been obtained.

The proposed Rule change allows the mooring of houseboats and floating camps within system streams when moored to legally permitted pilings, piers, bulkheads, or trees

using connections that do not damage the trees and with the permission of the owners of the trees. The proposed Rule also requires houseboats moored on system streams to have an approved sewerage disposal system aboard and that those aboard use it.

The proposed Rule change alters the permit application process to allow electronic or digital permit applications.

The proposed Rule change extends the time period in which the administrator must review and approve or reject the application from the current 15 days to 30 days after the adjournment of the hearing or the end of the written comment period.

The proposed Rule change clarifies language describing the appeals process to make the language in the regulations consistent with the statute.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed Rule change is expected to have no effect on revenue collections of state or local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The proposed Rule change may reduce recreational activity opportunities for an uncertain number of recreationists who operate all-terrain vehicles (ATVs), trucks, and other motor vehicles in natural and scenic rivers in Louisiana. Though no enumeration of individuals who engage in these activities has been made, informal counts estimate that there may be 200 to 400 people operating ATVs in the designated segment of the Comite River alone on a typical weekend during the peak season from June to August. It is unknown how many of these individuals will redirect their recreational ATV operational activities to other locations and how many would cease engaging in this recreational activity.

The proposed Rule change may benefit landowners by reducing potentially disruptive activities adjacent to their properties and by deterring trespassers while allowing the landowners themselves or those with their permission to operate such vehicles for recreational purposes near designated streams.

The proposed Rule change may also enhance recreational fishing opportunities along designated streams by reducing activities that may affect fish habitat. It is also expected to increase other recreational activities such as canoeing, kayaking, tubing, swimming, horseback riding, wildlife-watching, and other non-consumptive uses that can be supported simultaneously.

The proposed Rule change related to mooring of houseboats and floating camps within system streams is expected to increase recreational opportunities for boaters and campers along designated streams by improving water quality and promoting responsible use. The proposed Rule change may also prompt more boat owners to incur additional expenses installing sewage systems on houseboats although such equipment is already mandated on houseboats by existing state law.

The proposed Rule change in the application and review period are intended to enhance the convenience and efficiency of the process for permit applicants. Applicants would be expected to experience reduced postage and copying costs.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed Rule change is expected to have no effect on competition or employment.

Bryan McClinton  
Undersecretary  
1311#056

John D. Carpenter  
Legislative Fiscal Officer  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Wildlife and Fisheries Wildlife and Fisheries Commission

#### Wild Seafood Certification Program (LAC 76:1.701, 704, 705, and 709)

The secretary of wildlife and fisheries hereby advertises his intent to establish rules and regulations which require product registration and supply chain verification for certain participants in the Louisiana Wild Seafood Certification Program (R.S. 56:578.15). The proposed changes to the Louisiana Wild Seafood Certification Program will enable the department to better verify and monitor seafood products and businesses using the programs logo. The seafood certification program strives to increase consumer confidence and increase demand for Louisiana seafood. The primary mission with this origin-based certification program is to build a unified brand that will attract not only consumers, but also food service and seafood distribution buyers who want to be sure they are sourcing the best tasting seafood in the world: Louisiana seafood.

The secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this Notice of Intent and final Rule, including but not limited to, the filing of the Fiscal and Economic Impact Statement, the filing of the Notice of Intent and final Rule, and the preparation of reports and correspondence to other agencies of government.

#### Title 76

### WILDLIFE AND FISHERIES

#### Part I. Wildlife and Fisheries Commission and Agencies Thereunder

#### Chapter 7. Louisiana Wild Seafood Certification Program

#### §701. Declaration of Policy, Purposes, and Intent

A. ...

B. For the purpose of this Chapter, the following will be defined as:

*Commingled*—to cause to blend together, mix or combine; particularly as it applies to mixing non-certified seafood with LWSCP products;

*Landed*—taken and brought ashore;

*LDAF*—Louisiana Department of Agriculture and Forestry;

*LDHH*—Louisiana Department of Health and Hospitals;

*LDWF*—Louisiana Department of Wildlife and Fisheries;

*LWSCP*—Louisiana Wild Seafood Certification Program;

*Origin Test*—method of verifying product was taken from the Gulf of Mexico or Louisiana waters

*Packaged*—product that is contained in a closed and sealed package or container for sale which contains product labeling and designated weight, count, or volume;

*Processed*—any method of preparing fish or fish products for market including drying to a point of dehydration, canning, salting, freezing, breaching, or cooking for immediate consumption, but not simple packing of fresh fish in a sack, bag, package, crate, box, lug or vat for transport or holding.

#### C. Policy

1. Participation in the LWSCP is voluntary and limited to those individuals or entities meeting the following criteria:

a. must possess one of the following resident or non-resident Louisiana licenses:

- i. commercial fisherman's license;
- ii. senior commercial license;
- iii. fresh products dealer license;
- iv. seafood wholesale/retail dealer;
- v. seafood retail dealer;

b. wholesale/retail dealers must have their facility located within Louisiana. Retailers are not required to have their facility located within Louisiana;

c. eligible participants not requiring an LDWF license include in-state restaurants or grocers who only sell seafood that is fully prepared by cooking for immediate consumption by the consumer, and all out-of-state retailers;

d. must possess and be in compliance with all other state and federal permits, licenses, and laws regarding the buying, acquiring, or handling, from any person, by any means whatsoever, any species of fish or seafood products, whether fresh, frozen, processed, or unprocessed, for sale or resale, whether on a commission basis or otherwise. Including but not limited to any LDWF, LDHH or LDAF permits regulations;

e. if required, retailers and restaurants which meet the supply chain verification requirements as specified in §704 of this Chapter.

2. Product considered eligible to possess the LWSCP logo must meet the following criteria:

a. eligible wild seafood includes crab, oysters, freshwater finfish, saltwater finfish, crawfish, and shrimp. Seafood must be wild-caught, taken from Louisiana waters or from the Gulf of Mexico and any other adjacent state waters, and landed in Louisiana. Farmed and/or aquaculture products are excluded from program participation;

b. Seafood must be taken by a Louisiana licensed commercial fishermen. Seafood must be landed in Louisiana and either be sold under a LWSCP-participating fresh products dealer license, or be purchased and/or physically acquired by a wholesale/retail seafood dealer participating in the LWSCP. Transfer of product throughout the supply chain must be between LWSCP participants until the product has been placed in a sealed and LWSCP-labeled retail packaging;

c. seafood commingled with any other seafood that does not meet the above requirements, domestic or foreign, shall be prohibited from possessing the LWSCP label;

d. seafood products that are properly registered as required by §704 of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:578.15 and R.S. 56:23.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Office of the Secretary, LR 38:1999 (August 2012), amended by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 39:1062 (April 2013), LR 40:

#### §704. Product Registration and Supply Chain Verification

A. Seafood or seafood products that are packaged for retail sale shall be registered with LDWF. No packaged retail

seafood product shall possess the LWSCP logo unless it has been registered. Seafood products which are produced, packaged, and sold exclusively at the location of retail sale shall be exempt from the registration requirement.

1. Applications for product registration shall only be submitted by either the person packing the product or the person who owns the brand.

2. Product registrations are valid for one year, beginning on January 1 of each calendar year and expiring on December 31 of the same calendar year.

3. Applications for product registration shall be accepted at any time of the year for the current calendar year, and from November 15 for the immediately following calendar year.

4. Persons applying to register a product shall submit to LDWF the following information:

- a. the brand name of the product to be registered;
- b. the person who owns the brand name listed;
- c. the person who packages the product;
- d. list of each variety, form, size, and packaging type, of the product to be registered;
- e. invoices from the previous three months showing LWSCP-certified seafood purchases specific to the product being registered from a vendor who possesses an LWSCP permit. Exceptions to invoice submission requirements may be considered on a case-by-case basis for the following reasons:

- i. bulk purchases;
- ii. purchases from a vendor who has applied for, but does not yet possess an LWSCP permit, upon application approval and issuance of an LWSCP permit to the vendor.

B. Retailers and restaurants selling and/or serving unpackaged seafood, prepared or not prepared, who wish to identify such seafood with the LWSCP logo shall provide, at the time of initial application, invoices from the previous three months showing LWSCP-certified seafood purchases from a vendor who possesses an LWSCP permit at the time of their application.

1. At each annual permit renewal thereafter, invoices meeting these provisions from 6 months out of the last 12 months shall be submitted.

2. Exceptions to invoice submission requirements may be considered on a case-by-case basis for the following reasons:

- a. bulk purchases;
- b. purchases from a vendor who has applied for, but does not yet possess an LWSCP permit, upon application approval and issuance of an LWSCP permit to the vendor;
- c. persons possessing an LWSCP less than 12 months at the time of renewal.

C. Invoices required under the provisions of this Section shall not be required to disclose pricing information. Pricing information may be redacted, so long as the remainder of the invoice remains unaltered and intact. Invoices provided under the provisions of this Section are for verification purposes only and the only record to be maintained shall be a digital image of the submitted invoice. With the exception of invoice date, LDWF shall not enter information contained on submitted invoices into any database or other electronic format whatsoever. Invoices submitted under the provisions

of this Section shall be considered fisheries-dependent data under LAC 76:I.321.F and held confidential and shall not be subject to public records requests.

D. Persons participating in an LDWF-approved electronic traceability program and who allow LDWF access for verification purposes shall be exempt from all invoice submission provisions of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:578.15 and R.S. 56:23.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 40:

#### **§705. Logo Use Guidelines and Standards**

A. - F. ...

G. When the LWSCP logo is utilized for general marketing purposes as described in Paragraphs 3, 5, 7, and 8 of Subsection E, and when it is not associated with a specifically named product, one of following statements must appear immediately below the LWSCP logo:

1. "Ask us about our certified products;" or
2. "Ask us about our certified menu items."

a. Similar alternative statements may be approved by LDWF on a case-by-case basis upon request.

H. The secretary may authorize use of the logo in materials promoting the LWSCP.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:578.15 and R.S. 56:23.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Office of the Secretary, LR 38:2000 (August 2012), amended by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 40:

#### **§709. Monitoring and Enforcement**

A. - D. ...

E. LWSCP Violations

1. Any violation of the above LWSCP program rules shall constitute a class 1 violation under the authority of R.S. 56:23. The provisions of this Section do not exempt any person from other laws, rules, regulation, and license requirements for this or other jurisdictions.

2. If any required licenses or permits (LDWF, LDAF, LDHH) are revoked or temporarily suspended, the participant shall be automatically removed from the LWSCP and shall not be able to use the LWSCP logo. When the license(s) or permit(s) are reinstated, participant can be reinstated into the LWSCP via the renewal application process.

3.a. The following program violations involving LWSCP-labeled seafood products shall result in its seizure:

- i. commingling non-certified seafood with certified seafood,
- ii. intentional misrepresentation of program seafood,
- iii. any trademark infringement practices with LWSCP trademark and trade name,
- iv. fraudulent trip tickets and/or record keeping, and
- v. short weight violations.

b. Any seizures or forfeitures of LWSCP-labeled seafood product or materials shall be disposed of in accordance with LAC 76:I.305.B.

4. The department shall not issue a permit or register a product to any person convicted of the following offenses for the specified length of time from date of conviction.

Offense	Ineligible Period
Commingle non-certified seafood into certified program packaging	36 months
Misrepresentation of program seafood	36 months
Any trademark infringement practices with LWSCP trademark and trade name	36 months
Falsification or lack of trip tickets or other sales records, invoices, or bills of lading required by the program	36 months
Submission of fraudulent LWSCP application	36 months
Short weights	First offense 12 months; second offense 36 months
Scale tampering	First offense 12 months; second offense 36 months
Not adhering to labeling guidelines	First offense 12 months; second offense 36 months

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:578.15, R.S. 56:23, and 56:301.4.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Office of the Secretary, LR 38:2001 (August 2012), repromulgated LR 38:2566 (October 2012), amended by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 40:

#### Family Impact Statement

In accordance with Act No. 1183 of 1999, the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission hereby issues its Family Impact Statement in connection with the preceding Notice of Intent. This Notice of Intent will have no impact on the family criteria set out at R.S. 49:972(B).

#### Poverty Impact Statement

In accordance with Act No. 1183 of 1999, the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission hereby issues its Poverty Impact Statement in connection with the preceding Notice of Intent. This Notice of Intent will have no impact on the poverty criteria set out at R.S. 49:973(B).

#### Public Comments

Interested persons may submit written comments relative to the proposed Rule to Mr. Jason Froeba, Office of Fisheries, Department of Wildlife and Fisheries, P.O. Box 98000, Baton Rouge, LA 70898-9000, prior to Friday, December 27, 2013.

Robert J. Barham  
Secretary

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

#### RULE TITLE: Wild Seafood Certification Program

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed Rule change may result in a minor increase in costs to the Louisiana Department of Wildlife and Fisheries associated with processing Louisiana Wild Certification Seafood Program (LWSCP) applications.

The proposed Rule change amends the existing LWSCP regulations establishing rules for registering products that are packaged for retail as Louisiana Wild Seafood and for allowing retail establishments and restaurants that sell seafood products to display a Louisiana Wild Seafood logo.

The proposed rules change outlines the procedures for applying for product registration.

The proposed Rule change requires that seafood packagers that wish to register their packaged products in the LWSCP must submit invoices from the previous three months showing purchases of the specific product from a vendor that possesses a LWSCP permit. This requirement would apply to packagers applying for registration for the first time and for those that are renewing an existing registration.

The proposed rules change requires that retail establishments and restaurants that prepare and sell seafood products and that choose to display a Louisiana Wild Seafood logo must submit invoices showing purchases of seafood products from a vendor that possesses a LWSCP permit. Retail establishments and restaurants applying for the first time must show invoices for the three months prior to their application. Retail establishments and restaurants renewing an existing application must show invoices showing purchases from a LWSCP vendor for six of the previous 12 months.

The Rule change specifies that invoices are not required to include pricing information. Further, invoices submitted under these provisions are confidential and shall not be subject to public records requests.

Exceptions to the invoice submission requirement are allowed for seafood packagers, retail establishments, and restaurants that acquire seafood in bulk purchases and for those that purchase from a vendor who has applied for but does not yet possess a LWSCP permit and for those participating in LDWF-approved electronic seafood traceability programs.

The proposed Rule change also amends guidelines and standards for use of the LWSCP logo.

#### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed Rule change is expected to have no effect on revenue collections of state or local governmental units.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed Rule change would affect persons and businesses that package and sell seafood for retail sale and choose to place the Louisiana Wild Seafood Certification logo on their products. These persons and businesses would need to register their products annually with the LDWF following a registration process that includes identifying the variety, form, size, and packaging type of the product to be registered and submitting invoices demonstrating purchases of seafood from a vendor possessing a LWSCP permit over a three-month period.

The proposed Rule change would also affect retailers and restaurants that sell or serve unpackaged seafood and choose to associate the LWSCP logo with that seafood. These businesses would need to submit a permit application annually following a procedure that includes submitting invoices showing purchases of that seafood from a vendor with a LWSCP permit over a three-month period (for an initial applicants) or six months (for renewing applicants).

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed Rule change is expected to have no effect on competition or employment.

Bryan McClinton  
Undersecretary  
1311#055

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**  
**Workforce Commission**  
**Office of Unemployment Insurance**

Board of Review—Notice of Hearing (LAC 40:IV.111)

Editor's Note: The following Notice of Intent is being repromulgated to correct an error upon submission. The original Notice of Intent can be viewed in its entirety in the September 20, 2013 edition of the *Louisiana Register* on pages 2637-2638.

Pursuant to the authority granted in R.S. 23:1653, R.S. 23:1654, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Louisiana Workforce Commission proposes to amend §111. The purpose of the amendment to §111 is to remove obsolete nomenclature from the body of the Section and to comply with newly legislated Act 39 which reduces the notice of hearing requirement from 10 days to 7 days.

**Title 40**  
**LABOR AND EMPLOYMENT**  
**Part IV. Employment Security**  
**Subpart 1. Board of Review**

**Chapter 1. General Provisions**

**§111. Notice of Hearing**

A. A notice of hearing shall be mailed to all parties to the appeal at least seven days prior to the date of the hearing, specifying the place, date and time of the hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1631.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Employment Security, LR 15:486 (June 1989), amended by the Department of Employment and Training, Office of Employment Security, LR 17:36 (January 1991), amended by the Workforce Commission, Office of Unemployment Insurance, LR 40:

**Family Impact Statement**

Implementation of the proposed Rule and rule revisions should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on any family formation, stability, and autonomy. The proposed Rule and Rule revisions shall not have any impact on the six criteria set forth in R.S. 49:972(D).

**Poverty Impact Statement**

The proposed rulemaking will have no impact on poverty as described in R.S. 49:973.

**Small Business Statement**

The proposed Rule and rule revisions' impact on small business has been considered in accordance with R.S. 49:965.6, and it is estimated that the proposed actions will have negligible impact on small businesses as defined in the Regulatory Flexibility Act.

**Public Comments**

All interested parties are invited to submit views, arguments, information, or comments on the proposed Rule and rule revisions to Director, Office of Unemployment Insurance Administration, Louisiana Workforce Commission, P.O. Box 94094, Baton Rouge, LA 70804-9040. Written comments must be submitted and received by the agency within 20 days from the publication of this notice. A request pursuant to R.S. 49:953(A)(2) for oral presentation, argument, or public hearing must be made in

writing and received by the agency within 20 days of the publication of this notice.

Curt Eysink  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT**  
**FOR ADMINISTRATIVE RULES**

**RULE TITLE: Board of Review—Notice of Hearing**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule amends and revises Louisiana Administrative Code Title 40, Labor and Employment, Part IV, Subpart 1, Chapter 1, Section 111 Notice of Hearing. The amendment reduces the advance notice of hearing requirement from 10 days to 7 days to comply with Act 39 of the 2013 Regular Legislative Session. Also, the amendment removes obsolete nomenclature from the body of the section.

The Office of Unemployment Insurance Administration (OUIA) does not anticipate the implementation of the revisions to have a fiscal impact for FY 13-14, FY 14-15, or FY 15-16. The OUIA will only expend those administrative expenses necessary for the promulgation and revision of this proposed rule and final rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed amendments to Section 111 will have no anticipated effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Upon a request for an appeal by a claimant or employer, OUIA mails a notice of hearing at least 10 days prior to the date of the hearing. The proposed amendments to Section 111 reduces the advance notice of hearing from 10 days to 7 days; therefore, the OUIA may hear and resolve appeals 3 days earlier. This is extremely beneficial to single party hearings involving either the claimant or the employer that may have their appeals heard and resolved earlier.

The proposed amendments to Section 111 are not anticipated to increase costs on persons directly affect or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that there will be no effect on competition and employment as a result of the implementation of the proposed revision of Section 111.

Curt Eysink  
Executive Director  
1311#018

Gregory V. Albrecht  
Chief Economist  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Workforce Commission**  
**Office of Unemployment Insurance**

Determining Whether Workers are Employees or  
Independent Contractors (LAC 40:IV.375)

Pursuant to the authority granted in R.S. 23:1653, R.S. 23:1654, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Louisiana Workforce Commission proposes to promulgate §375. The purpose of promulgating

§375 is to list the factors to consider in determining whether workers are properly classified as independent contractors or employees for the purposes of unemployment insurance contributions.

**Title 40**  
**LABOR AND EMPLOYMENT**  
**Part IV. Employment Security**  
**Subpart 1. Board of Review**

**Chapter 3. Employment Security Law**

**§375. Determining Whether Workers are Employees or Independent Contractors**

A. The totality of the circumstances will be considered in determining whether workers are properly classified as employees or independent contractors, including the following factors regarding control and direction of each individual worker's position under 23:1472(12)(E)(I).

1. Behavioral Control. Facts that show a right to control or direct how the worker does the task for which the worker is hired. The type and degree of instruction given to the worker shall be considered including, but not limited to:

- a. when and where to do the work;
- b. what tools or equipment to use;
- c. what workers to hire or to assist with the work;
- d. where to purchase supplies and services;
- e. what work must be performed by a specified individual;
- f. what order or sequence to follow in performing the work;
- g. how work results are achieved;
- h. whether the worker is hired and discharged under specific terms of an agreement or at-will.

i. the extent to which the worker is subjected to pre-employment testing, credentialing, resume verification, background checks, drug testing and/or pre-employment physicals;

j. the extent to which the job opening was represented as employment; and

k. training given the worker.

2. Financial Control. Facts that show whether there is a right to control or direct the business aspects of the worker's job including, but not limited to:

a. the extent to which the worker has unreimbursed business expenses;

b. the extent of the worker's investment in the tasks beyond the worker's own time;

c. the extent to which the worker makes services available to the relevant market;

d. whether payment is made based solely upon time worked or includes other factors;

e. whether the worker tracks time worked and calculates amounts due; and

f. the extent to which the worker can realize a profit or loss.

3. Type of Relationship. Facts that show the nature of the parties' relationship including, but not limited to:

a. written contracts describing the relationship the parties intended to create;

b. whether the worker is provided employee-type benefits, such as insurance, a pension plan, vacation pay, or sick pay;

c. whether the relationship is of a definite term; and

d. the extent to which services performed by the worker are similar to duties of employees at the worksite.

4. A prior determination by a taxing authority regarding the relationship.

5. As used in R.S. 23:1472(12)(e), the term *any control or direction* shall include, but not by way of limitation, direction or control exercised at the worksite by any person authorized to direct or control the work performed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1653 et seq.

HISTORICAL NOTE: Promulgated by the Workforce Commission, Office of Unemployment Insurance, LR 40:

**Family Impact Statement**

Implementation of the proposed rules should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on any family formation, stability, and autonomy. The proposed rules shall not have any impact on the six criteria set forth in R.S. 49:972(d).

**Poverty Impact Statement**

The proposed rulemaking will have no impact on poverty as described in R.S. 49:973.

**Small Business Statement**

The proposed Rule's impact on small business has been considered in accordance with R.S. 49:965.6, and it is estimated that the proposed actions will have negligible impact on small businesses as defined in the Regulatory Flexibility Act.

**Public Comments**

All interested parties are invited to submit views, arguments, information, or comments on the proposed rules to Director, Office of Unemployment Insurance Administration, Louisiana Workforce Commission, P.O. Box 94094, Baton Rouge, LA 70804-9040. Written comments must be submitted and received by the agency within 20 days from the publication of this notice. A request pursuant to R.S. 49:953(A)(2) for oral presentation, argument, or public hearing must be made in writing and received by the agency within 20 days of the publication of this notice.

**Public Hearing**

In accordance with R.S. 49:968(H)(2), a public hearing will be held on January 29, 2014, at 10 a.m. at the LWC Training Center, 2155 Fuqua Street, Baton Rouge, LA 70802.

Curt Eysink  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Determining Whether Workers are  
Employees or Independent Contractors**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule enacts Louisiana Administrative Code (LAC) Title 40, Labor and Employment, Part IV, Part 3 Employment Security Law determining whether workers are employees or independent contractors. In accordance with updated factors announced by the U.S. Department Of The Treasury Internal Revenue Service (IRS), the proposed rule enacts new factors used in conjunction with existing La R.S. 23:1472 to determine whether workers are independent

contractors or employers for the purposes of unemployment insurance contributions. Therefore, the proposed rule clarifies existing statute and does not change the existing definition of an employee.

The Office of Unemployment Insurance Tax does not anticipate the implementation of the new and amended rules to have a fiscal impact for FY 13-14, FY 14-15, or FY 15-16. The only costs associated with this proposed rule are administrative expenses necessary for the promulgation the rule that is estimated at \$820.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule will have no anticipated effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule is not anticipated to increase costs on persons directly affect or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule is not anticipated to have an impact on competition and employment.

Curt Eysink  
Executive Director  
1311#035

Gregory V. Albrecht  
Chief Economist  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Workforce Commission  
Office of Unemployment Insurance**

Electronic Filing (LAC 40:IV.377)

Pursuant to the authority granted in R.S. 23:1653, R.S. 23:1654, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Louisiana Workforce Commission proposes to promulgate §377. The purpose of the Rule is to clarify the requirement to file quarterly reports electronically as required by R.S. 23:1531.1, and to provide guidance as to acceptable payment methods and the posting of contribution payments.

**Title 40**

**LABOR AND EMPLOYMENT**

**Part IV. Employment Security**

**Subpart 1. Board of Review**

**Chapter 3. Employment Security Law**

**§377. Electronic Filing of Wage and Tax Reports Required; Payment of Unemployment Contributions by Electronic Funds Transfer, Paper Check, ACH or Other Method Approved by the Executive Director**

A. All employers must file quarterly, annual, and amended wage reports electronically for any reports due after January 31, 2014.

B. All employer's agents and professional employer organizations as defined in La. R.S. 23:1761 must file quarterly, annual, and amended wage reports electronically for any employer's reports due after January 31, 2014.

C. Contributions must be paid by the following methods:

1. electronic funds transfer (EFT);
2. automated clearing house (ACH);
3. paper check; or

4. any other method of payment approved by the executive director.

D.1. If an employer, agent or professional employer organization elects to pay the contributions due by paper check, it must be accompanied by the appropriate voucher downloaded from the Workforce Commission's portal and mailed only to the address printed on the voucher. Payments made by paper check are not credited to the employer's account until the check is received.

2. The failure to mail the voucher and paper check to the address given on the voucher may result in the imposition of penalties and interest as authorized by R.S. 23:1543.

E. The electronic reporting requirement may be waived by the executive director only upon a showing by the employer, agent or professional employer organization that electronic reporting has created a hardship. All applications for a waiver must be in writing and submitted to the executive director, setting forth detailed reasons the requirement to file electronically creates a hardship.

1. The term *hardship* includes, without limitation:

a. a financial burden or expense which significantly impairs the employer's ability to continue to conduct its business;

b. electronic filing would impose a hardship due to a physical disability or geographic barrier;

c. the requirement to file electronically is contrary to equity or good conscience due to the specific circumstances of the employer requesting the waiver.

2. A request for a waiver must be in writing and must be delivered to the administrator after January 1, 2014, but before March 31, 2014.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1631.

HISTORICAL NOTE: Promulgated by the Workforce Commission, Office of Unemployment Insurance, LR 40:

**Family Impact Statement**

Implementation of the proposed rules should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on any family formation, stability, and autonomy. The proposed rules shall not have any impact on the six criteria set forth in R.S. 49:972(d).

**Poverty Impact Statement**

The proposed rulemaking will have no impact on poverty as described in R.S. 49:973.

**Small Business Statement**

The proposed Rule's impact on small business has been considered in accordance with R.S. 49:965.6, and it is estimated that the proposed actions will have negligible impact on small businesses as defined in the Regulatory Flexibility Act.

**Public Comments**

All interested parties are invited to submit views, arguments, information, or comments on the proposed rules to Director, Office of Unemployment Insurance Administration, Louisiana Workforce Commission, P.O. Box 94094, Baton Rouge, LA 70804-9040. Written comments must be submitted and received by the agency within 20 days from the publication of this notice. A request pursuant to R.S. 49:953(A)(2) for oral presentation, argument, or public hearing must be made in writing and received by the agency within 20 days of the publication of this notice.

**Public Hearing**

In accordance with R.S. 49:968(H)(2), a public hearing will be held on January 29, 2014, at 10 a.m. at the LWC Training Center, 2155 Fuqua Street, Baton Rouge, LA 70802.

Curt Eysink  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Employment Security Law**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rule enacts Louisiana Administrative Code (LAC) Title 40, Labor and Employment, Part IV, Part 3 Employment Security Law regarding electronic filing of wage and tax reports. In accordance with R.S. 23:1531.1, all employers must file wage reports electronically after January 31, 2014. The executive director may waive the electronic filing requirement if it creates a hardship on the employer.

Also, the proposed rule amends Section 369 Waiver of Overpayment Recovery. The amendment clarifies that the person seeking a waiver of overpayment recovery must complete and return the financial questionnaire prior to the date of the hearing.

The Office of Unemployment Insurance Tax does not anticipate the implementation of the new and amended rules to have a fiscal impact for FY 13-14, FY 14-15, or FY 15-16. The only costs associated with this proposed rule are administrative expenses necessary for the promulgation the rule that is estimated at \$328.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rule will have no anticipated effect on revenue collections of state or local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The proposed rule is not anticipated to increase costs on persons directly affect or non-governmental groups.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed rule is not anticipated to have an impact on competition and employment.

Curt Eysink  
Executive Director  
1311#033

Gregory V. Albrecht  
Chief Economist  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Workforce Commission  
Office of Unemployment Insurance**

**Employer Registration When Required (LAC 40:IV.317)**

Pursuant to the authority granted in R.S. 23:1653 and R.S. 23:1654, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Louisiana Workforce Commission proposes to promulgate §317. This text has been added to clarify that all employers who pay wages to workers in this state must register with the Louisiana Workforce

Commission within 30 days of paying wages to a worker in this state regardless of the employer’s domicile or the state in which the employer normally pays or reports wages paid.

**Title 40**

**LABOR AND EMPLOYMENT**

**Part IV. Employment Security**

**Subpart 1. Board of Review**

**Chapter 3. Employment Security Law**

**§317. Employer Registration When Required**

A. Any employing unit who pays wages to a worker within this state, or who pays wages to a worker for work performed in this state, or pays wages to a worker who is domiciled in this state, must, within 30 days of the first payment to a worker in this state or for work performed in this state, register as an employer with the Louisiana Workforce Commission.

B. The employing unit must register regardless of whether it:

1. has registered in another state;
2. files contribution reports in another state;
3. believes it is an employer subject to the Louisiana Employment Security Law;
4. pays contributions in another state; or
5. believes its workers are independent contractors.

C. After the employing unit has registered, the Louisiana Workforce Commission will determine whether the employing unit is an “employer” within the meaning of R.S. 23:1472(11) and whether the individual(s) to whom wages were paid are “employees” within the meaning of R.S. 23:1472(12)

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1491 and R.S. 23:1513.

HISTORICAL NOTE: Promulgated by the Workforce Commission, Office of Unemployment Insurance, LR 40:

**Family Impact Statement**

Implementation of the proposed rules should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on any family formation, stability, and autonomy. The proposed rules shall not have any impact on the six criteria set forth in R.S. 49:972(d).

**Poverty Impact Statement**

The proposed rulemaking will have no impact on poverty as described in R.S. 49:973.

**Small Business Statement**

The proposed Rule’s impact on small business has been considered in accordance with R.S. 49:965.6, and it is estimated that the proposed actions will have negligible impact on small businesses as defined in the Regulatory Flexibility Act.

**Public Comments**

All interested parties are invited to submit views, arguments, information, or comments on the proposed rules to Director, Office of Unemployment Insurance Administration, Louisiana Workforce Commission, P.O. Box 94094, Baton Rouge, LA 70804-9040. Written comments must be submitted and received by the agency within 20 days from the publication of this notice. A request pursuant to R.S. 49:953(A)(2) for oral presentation, argument, or public hearing must be made in writing and received by the agency within 20 days of the publication of this notice.

## Public Hearing

In accordance with R.S. 49:968(H)(2), a public hearing will be held on January 29, 2014, at 10 a.m. at the LWC Training Center, 2155 Fuqua Street, Baton Rouge, LA 70802.

Curt Eysink  
Executive Director

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Employer Registration When Required

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule enacts Louisiana Administrative Code (LAC) Title 40, Labor and Employment, Part IV, Part 3, Section 317 Employer Registration. Current law requires employers to register but there is no directive regarding when registration must be completed. The proposed rule clarifies that employers should register with the Louisiana Workforce Commission (LWC) within thirty (30) days of paying wages to workers.

The Office of Unemployment Insurance Tax does not anticipate the implementation of the new and amended rules to have a fiscal impact for FY 13-14, FY 14-15, or FY 15-16. The only costs associated with this proposed rule are administrative expenses necessary for the promulgation the rule that is estimated at \$820.

#### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule will have no anticipated effect on revenue collections of state or local governmental units.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule is not anticipated to have any fiscal impact on persons directly affect or non-governmental groups.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule is not anticipated to have an impact on competition and employment.

Curt Eysink  
Executive Director  
1311#032

Gregory V. Albrecht  
Chief Economist  
Legislative Fiscal Office

## NOTICE OF INTENT

### Workforce Commission Office of Unemployment Insurance

Employment Security Law (LAC 40:IV.303 and 364)

Editor's Note: The following Notice of Intent is being repromulgated to correct an error upon submission. The original Notice of Intent can be viewed in its entirety in the September 20, 2013 edition of the *Louisiana Register* on pages 2638-2639.

Pursuant to the authority granted in R.S. 23:1653 and R.S. 23:1654, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Louisiana Workforce Commission proposes to promulgate §303 and §364. The purpose of promulgating §303 is to clarify the training requirements for newly hired administrative law judges. The purpose of

promulgating §364 is to provide clarity in regard to the appeal rights associated with reciprocal offsets.

## Title 40

### LABOR AND EMPLOYMENT

#### Part IV. Employment Security

##### Subpart 1. Board of Review

#### Chapter 3. Employment Security Law

##### §303. Training of Administrative Law Judges

A. Prior to participation in any claim resolution, newly hired administrative law judges will participate in web-based and/or in-person training on: agency policy and precedent, benefits analysis, the unemployment insurance system, the appeals process, and the proper methods for conducting hearings and writing decisions according to federal quality standards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1653 et seq.

HISTORICAL NOTE: Promulgated by the Workforce Commission, Office of Unemployment Insurance, LR 40:

##### §364. Reciprocal Offset

A. An appeal of a determination to offset unemployment benefits under R.S. 23:1665.2 shall be limited to the authority of the administrator of the Louisiana Workforce Commission to offset against benefits payable to the claimant and shall be conducted in accordance with R.S. 23:1629 and R.S. 23:1630. All issues concerning the validity of the overpayment shall be directed by the claimant to the requesting state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1653 et seq.

HISTORICAL NOTE: Promulgated by the Workforce Commission, Office of Unemployment Insurance Administration, LR 40:

#### Family Impact Statement

Implementation of the proposed rules should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on any family formation, stability, and autonomy. The proposed rules shall not have any impact on the six criteria set forth in R.S. 49:972(D).

#### Poverty Impact Statement

The proposed rulemaking will have no impact on poverty as described in R.S. 49:973.

#### Small Business Statement

The proposed rules' impact on small business has been considered in accordance with R.S. 49:965.6, and it is estimated that the proposed actions will have negligible impact on small businesses as defined in the Regulatory Flexibility Act.

#### Public Comments

All interested parties are invited to submit views, arguments, information, or comments on the proposed rules to Director, Office of Unemployment Insurance Administration, Louisiana Workforce Commission, P.O. Box 94094, Baton Rouge, LA 70804-9040. Written comments must be submitted and received by the agency within 20 days from the publication of this notice. A request pursuant to R.S. 49:953(A)(2) for oral presentation, argument, or public hearing must be made in writing and received by the agency within 20 days of the publication of this notice.

Curt Eysink  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Employment Security Law**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rule adopts Louisiana Administrative Code Title 40, Labor and Employment, Part IV, Subpart 1, Chapter 3, Section 303 Training of Administrative Law Judges and Section 364 Reciprocal Offset. Section 303 clarifies the training requirements for newly hired administrative law judges. Section 364 clarifies the appeal rights associated with reciprocal offsets in compliance with Act 48 of the 2013 Regular Legislative Session, which allows the reciprocal offsetting of benefits by and for other state and federal agencies.

The Office of Unemployment Insurance Administration (OUIA) does not anticipate the implementation of the revisions to have a fiscal impact for FY 13-14, FY 14-15, or FY 15-16. The OUIA will only expend those administrative expenses necessary for the promulgation and revision of this proposed rule and final rule.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

Section 364 that allows the reciprocal offsetting of benefits by and for other state and federal agencies may result in an increase in revenue collections. Act 48 of the 2013 Regular Legislative Session authorize a reciprocal arrangement between Louisiana and other signatory states in the Interstate Reciprocal Overpayment Recovery Agreement (IRORA) to collect overpayment of unemployment benefits from current unemployment benefits being paid. Although these overpayment collections will be returned to the Unemployment Trust Fund, the OUIA may collect penalties and interest, which would be deposited into the Penalty and Interest Account.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The proposed actions are not anticipated to have any fiscal impact on directly affected persons or non-governmental groups.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

It is anticipated that there will be no effect on competition and employment as a result of the adoption of proposed rules.

Curt Eysink  
Executive Director  
1311#019

Gregory V. Albrecht  
Chief Economist  
Legislative Fiscal Office

# Potpourri

## POTPOURRI

### Department of Environmental Quality Office of the Secretary Legal Division

Clarification Notice of the Estimation of the Unobligated Balance Associated with the Motor Fuel Underground Storage Tank Trust Fund

This potpourri notice (1311Pot1) clarifies R.S. 30:2195.3 (A)(10) that requires the fee authorized by R.S. 30:2195.3.A.(1)(a) not be collected or be required to be paid after a determination has been made by the board that the unobligated balance in the Tank Trust Fund equals or exceeds twenty million dollars.

In making that determination, the board calculates the unobligated balance by subtracting from the cash balance in the Tank Trust Fund at the end of each month the sum of the total estimates made by the board of eligible payment requests pending review and the outstanding balance of the estimated costs to be incurred associated with corrective action plans approved by the department. The portion of the obligated balance for Trust Fund eligible sites without an approved Corrective Action Plan is determined by applying generally accepted accounting guidelines and utilizing historical site specific data. This practice ensures compliance with the statutory requirement that the board make a determination of the estimated costs to be incurred.

The estimated costs to be incurred by sites deemed eligible are a necessary component of determining the obligated balance in the Tank Trust Fund.

For questions concerning this notice (1311Pot1), please contact Perry Theriot, Attorney Supervisor, Office of the Secretary, Legal Division, Box 4302, Baton Rouge, LA 70821-4302; FAX (225) 219-4068; or email at perry.theriot@la.gov.

Herman Robinson, CPM  
Executive Counsel

1311#024

## POTPOURRI

### Department of Health and Hospitals Board of Veterinary Medicine

#### Board Meeting Dates

The Members of the Louisiana Board of Veterinary Medicine will meet at 8:30 a.m. on the following dates in 2014.

Thursday, February 6, 2014  
Thursday, April 3, 2014  
Thursday, June 5, 2014 (Annual Meeting)  
Thursday, August 7, 2014  
Thursday, October 2, 2014  
Thursday, December 4, 2014

These dates are subject to change, so please contact the board office via telephone at (225) 342-2176 or email at admin@lsbvm.org to verify actual meeting dates.

Wendy D. Parrish  
Executive Director

1311#027

## POTPOURRI

### Department of Natural Resources Office of Conservation

#### Orphaned Oilfield Sites

Office of Conservation records indicate that the Oilfield Sites listed in the table below have met the requirements as set forth by Section 91 of Act 404, R.S. 30:80 et seq., and as such are being declared Orphaned Oilfield Sites.

Operator	Field	District	Well Name	Well Number	Serial Number
J L Shoalmire Operating Co Inc	Red River-Bull Bayou	S	RRBB Morrow Su;Pugh Estate	A-43	110472
Ark. Nat. Gas Corp.	Elm Grove	S	J H Vanhooose	B-4	12126
John A. Economo	Caddo Pine Island	S	Glassell-North	001	29538
Sundance Oil Co.	Wildcat-So La Lafayette Dist	L	Dr M O Miller	001	146620
Choate Oil Corporation	Wildcat-No La Shreveport Dist	S	Glassell	007	3949
Aviva America, Inc.	Breton Sound Block 31	L	SI 4407	001	115220
Aviva America, Inc.	Breton Sound Block 31	L	SI 4407	003	117253
Aviva America, Inc.	Breton Sound Block 31	L	SI 4407	004	117727
Aviva America, Inc.	Breton Sound Block 31	L	SI 4865	001	122769
Aviva America, Inc.	Breton Sound Block 31	L	SI 5049	001	124288
Aviva America, Inc.	Breton Sound Block 31	L	SI 4865	002	124289
Aviva America, Inc.	Breton Sound Block 31	L	SI 4458	002	133386
Aviva America, Inc.	Breton Sound Block 31	L	SI 4407	006	185457
Aviva America, Inc.	Breton Sound Block 31	L	SI 4865	003	186146
Aviva America, Inc.	Breton Sound Block 31	L	SI 4865	005	203722
Aviva America, Inc.	Breton Sound Block 31	L	SI 4865 SWD	001	972781
Wesley Griffith	Monroe	M	Brown-Milner	005	148171
Wesley Griffith	Monroe	M	Brown-Milner	006	148172
Wesley Griffith	Monroe	M	Vance Trichel	002	148309
Wesley Griffith	Monroe	M	Harrell Su828; Brown-Milner	007	148320
Wesley Griffith	Monroe	M	Vance Trichel	001	148330
Wesley Griffith	Monroe	M	Vance Trichel	004	148925
Wesley Griffith	Monroe	M	Vance Trichel	006	149244
Wesley Griffith	Monroe	M	Vance Trichel	007	149245
Wesley Griffith	Monroe	M	Vance Trichel	008	149246
Wesley Griffith	Monroe	M	Vance Trichel	009	149247
Wesley Griffith	Monroe	M	Brown-Milner	010	149475
Wesley Griffith	Monroe	M	Vance Trichel	010	149476
Wesley Griffith	Monroe	M	Brown-Milner	011	149592
Wesley Griffith	Monroe	M	Harrell Su827; Brown-Milner	001	150823
Wesley Griffith	Monroe	M	John M Coats Iv	001	153670
Wesley Griffith	Monroe	M	Brown-Milner	001-D	154146

Operator	Field	District	Well Name	Well Number	Serial Number
Wesley Griffith	Monroe	M	Brown-Milner	015	178976
Wesley Griffith	Monroe	M	Annona Ra Sub; Brown Milner	002	179099
Wesley Griffith	Monroe	M	Vance Trichel	011	179374
Wesley Griffith	Monroe	M	Brown-Milner	004	184404
Wesley Griffith	Monroe	M	Harrell Su826; Vance Trichel	012-ALT	184574
Wesley Griffith	Monroe	M	Mrs G M Hill	002	188058
Wesley Griffith	Monroe	M	Mrs G M Hill	003	188059
Wesley Griffith	Monroe	M	Mrs G M Hill	004	188060
Wesley Griffith	Monroe	M	Annona Vub; Vance Trichel	017	197899
Wesley Griffith	Monroe	M	Harrell Su826; Vance Trichel	015	197902
Wesley Griffith	Monroe	M	Annona Ra Suj; Vance Trichel	016	197922
Wesley Griffith	Monroe	M	Annona Ra Sug; Brown- Milner	019	197926
Wesley Griffith	Monroe	M	Harrell Su779; Vance Trichel	019	198079
Wesley Griffith	Lamar	M	Ma Tusc SUA; Biggs	002	221396
Wesley Griffith	Lamar	M	Carter	001	222758
Wesley Griffith	Lamar	M	Carter SWD	002	222822
Wesley Griffith	Monroe	M	Johnson	001	241305

James H. Welsh  
Commissioner

1311#023

### POTPOURRI

#### Department of Natural Resources Office of the Secretary Fishermen's Gear Compensation Fund

##### Underwater Obstruction Latitude/Longitude Coordinates

In accordance with the provisions of R.S. 56:700.1 et seq., notice is given that 13 claims in the amount of \$58,748.76 were received for payment during the period October 1, 2013 - October 31, 2013

There were 13 paid and 0 denied.

Latitude/Longitude Coordinates, in Degree Decimal Minutes, of reported underwater obstructions are:

29 03.526	90 39.968	Terrebonne
29 08.858	90 30.224	Terrebonne
29 08.866	90 56.196	Terrebonne
29 09.143	90 55.630	Terrebonne
29 11.285	90 01.580	Jefferson
29 13.190	89 59.229	Jefferson
29 19.891	89 59.099	Jefferson
29 25.845	89 56.335	Plaquemines
29 25.866	89 56.343	Plaquemines
29 32.773	89 52.810	Plaquemines
29 38.445	90 05.706	Jefferson
29 38.533	89 35.489	Plaquemines
29 54.566	90 35.210	St. John the Baptist

A list of claimants and amounts paid can be obtained from Gwendolyn Thomas, Administrator, Fishermen's Gear Compensation Fund, P.O. Box 44277, Baton Rouge, LA 70804 or you can call (225)342-9388.

Stephen Chustz  
Secretary

1311#031

### POTPOURRI

#### Department of Public Safety and Corrections Office of State Police

Public Hearing—Substantive Changes to Proposed Rule Amendments—Towing, Recovery and Storage (LAC 55:I.1905, 1913, 1941, 1943, and 1947)

The Department of Public Safety, Office of State Police published a Notice of Intent to amend its rules in the September 20, 2013, edition of the *Louisiana Register* (LR 39, No.9). The notice was incorrect in several respects. In order to correct the inaccurate amendments, the department proposes to make substantive changes to §§1905, 1913, 1941, 1943 and 1947 of the proposed Rule amendments so that, as amended, these provisions will read as set forth below.

In accordance with R.S. 49:968(H)(2), a public hearing on proposed substantive changes will be held by the department on December 20, 2013, at 9 a.m. at the offices of the Louisiana State Police (Room C), 7919 Independence Blvd., Baton Rouge, LA 70806.

#### Title 55 PUBLIC SAFETY Part I. State Police

#### Chapter 19. Towing, Recovery and Storage Subchapter A. Authority, Exemptions, Definitions, Scope §1905. Definitions

A. ...

\* \* \*

*Non-Consensual Towing*—the movement or transportation of a vehicle by a tow truck without the prior consent or authorization of the owner or operator of the vehicle. This includes private property tows conducted in accordance with the provisions of R.S. 32:1736 and tows by law enforcement or other public agencies. Whenever an owner or operator of a vehicle requests a law enforcement officer or other public agency to initiate a tow, such tow shall be considered non-consensual and subject to Louisiana Public Service Commission tow rates.

\* \* \*

*Tow Truck*—any motor vehicle equipped with a boom or booms, winches, slings, tilt beds, semi-trailers, and/or similar equipment designed for the towing and/or recovery of vehicles and other objects which cannot operate under their own power or for some reason must be transported by means of towing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1714.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, LR 32:854 (May 2006), amended LR 40:

**Subchapter B. Tow Truck License Plate; Required Insurance**

**§1913. Tow Truck License Plate**

A. - A.1. ...

a. Car carrier companies which transport less than five motor vehicles and do not store or hold motor vehicles shall be licensed as tow trucks upon application and submission of an affidavit to the Department of Public Safety and Corrections stating that the company does not store or hold motor vehicles and does not carry garage keeper's legal liability or garage liability insurance. These companies shall receive a "car carrier" endorsement on their required motor vehicle registration. This does not exclude the car carrier company from any other regulations as set by the Louisiana Towing and Storage Act.

2.-2.b. ...

c. legal business entities such as corporations, limited liability companies, partnerships, limited liability partnerships, or other such legally recognized entities, whether registered with the office of the Secretary of State or not, should use their legally registered trade name as their business name. Such legally acknowledged entities shall include in the application:

2.c.i. - 3.b. ...

c. Tow truck operators or owners shall permanently affix and prominently display on both sides of tow trucks the legal trade name of their business, telephone number and city of the vehicle's domicile in lettering at least 2 ½ inches in height and not less than ¼ inch in width. Truck and trailer combinations used to transport vehicles may choose to mark either the truck or trailer.

A.3.d. - B.3.a.i. ...

ii. a tow truck has a GVWR or GCWR of 10,000 pounds or less and it shall not be used for towing vehicles for compensation; unless the year of manufacture is prior to 2007, in which case, a GVWR of 10,000 pounds shall not be cause for denial, or

B.3.a.iii. - C.1.c. ...

d. the applicant or employee that operates a tow truck is found to have been convicted of a felony relating to auto theft, vehicle insurance fraud, burglary of a vehicle and/or possession of a stolen vehicle(s) or stolen vehicle parts or employs someone convicted of one of the above stated offenses.

D. - D.1.c. ...

d. obtaining a tow truck license plate under false pretenses; or the applicant or employee that operates a tow truck is found to have been convicted of a felony relating to auto theft, vehicle insurance fraud, burglary of a vehicle and/or possession of stolen vehicle(s) or stolen vehicle parts or employs someone convicted of one of the above stated offenses;

e. - h. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1714.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, LR 32:854 (May 2006), amended LR 40:

**Subchapter D. Vehicle Storage**

**§1941. Storage and Towing Facilities; General Requirements; Procedures**

A. - B. ...

1. Authorized representative shall mean anyone who has obtained written authorization from the vehicle owner or lien holder. Written authorization shall contain the name of the authorized agent, the name and signature of the vehicle owner or lien holder, a phone number for the vehicle owner or lien holder, and a description of the vehicle including the year, make, model, and color. Written authorization does not need to be notarized if signature of the owner or lien holder is witnessed and contains a photocopy of the owner's government issued photo identification. Written authorization shall be maintained with the vehicle file at the towing and/or storage facility' place of business. The requirement of written authorization shall not apply to an insurance company or its representative as provided in R.S. 22:1292(C)(2).

C. - Q.11....

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1714.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, LR 32:854 (May 2006), amended LR 40:

**§1943. Storage Rates**

A. ...

B. Towing and/or storage facilities shall be staffed and open for business Monday thru Friday, 8 a.m. to 5 p.m., excluding state holidays. Employees staffing the facility must have access to vehicle storage records to assist in administrative inspections by the department and be able to release vehicles and/or belongings. All storage records since the date of the last annual storage inspection must be readily accessible and available. Storage records prior to the last annual inspection, if not readily available, shall be made available by the end of the next business day.

1. Licensed storage facilities that operate as a mechanic or repair shop and do not conduct non-consensual tows may set their own business hours provided they do not charge gate fees and give notice to the Department by noting their days and hours of operation on their storage license application or renewal form. The storage facility must be open for business at least five days a week. These hours must be clearly posted along with other required information in accordance with §1941.D of this Chapter. Storage Facilities that do not adhere to the hours of operation listed on their storage license application or renewal form shall be in violation of failing to staff their facility. Towing and/or storage facilities shall be staffed and open for business Monday thru Friday, 8 a.m. to 5 p.m., excluding state holidays.

C. ...

D. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1714.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, LR 32:854 (May 2006), amended LR 40:

**Subchapter E. Rotation List**

**§1947. Law Enforcement Tow Truck Rotation List**

A. - A.5.d. ...

6. No law enforcement officer shall recommend to the vehicle owner or operator a specific tow company to conduct a tow. All tows shall be referred to the law enforcement rotation list or the authorized contractor for the law enforcement agency. When the owner or operator exercises their option to select the tow company, such selection shall be duly noted on the tow invoice or the law enforcement record of the incident.

B. ...

1. Every person, firm, corporation or other entity who participates in a law enforcement Tow Rotation Program, and is engaged in, or associated with the towing, removal or storage of any wrecked, abandoned, disabled or other designated vehicle, shall comply with the department's procedural orders and all applicable state laws, and administrative regulations governing the towing and storage of vehicles including, but not limited to, R.S. 32:1711 et seq., and LAC 55:I.1901 et seq.

C. - C.4. ...

5. not be owned, operated by, or knowingly employ any person that operates tow trucks who has been convicted of a felony relating to auto theft, vehicle insurance fraud, burglary of a vehicle, possession of stolen vehicles or vehicle parts.

C.6. - F. ...

1. Each tow truck and operator shall meet all operational requirements mandated for tow trucks in R.S. 23, 32, and 47 as well as LAC 55. All tow trucks in a business's fleet shall also be equipped with the following:

1.a. - 2.f. ...

g. wear an approved ANSI Class II or III reflective vest that is in good condition and fits the operator when working on or near the roadway during crash or vehicle recovery.

F.3. - G.5.a. ...

6. Interference with commissioned officers at the scene or failure to comply with the officer's instructions is prohibited. No tow truck owner, operator, or employee shall be required to follow a directive or order that is unsafe or beyond the operational standard or capacity of any equipment being used in cleanup or in the removing of the roadway hazard. If a tow truck owner or operator refuses to follow a directive or order because of an unsafe condition, no adverse action by a law enforcement agency shall be taken against such owner or operator including removal from any rotation list.

G.7.-H.2.a.iv.(b). ...

(c). at least 100 feet of wire or synthetic rope, except that a slide back and tilt bed carrier may have only 50 feet of wire or synthetic rope, with a minimum diameter of 3/8 inch, rated at a minimum of 12,000 pounds breaking strength.

a.v. - b.iv.(a). ...

(b). power winch rated not less than 20,000 pounds, dual winches must have a minimum of 150 feet wire or synthetic rope per winch with a breaking strength of 21,000 pounds and 1/2 inch in diameter.

v. - vi.(b). ...

(c). at least 50 feet of 3/8 inch cable or synthetic rope.

b.vi.(d). - c.iv.(b). ...

(c). minimum of 200 feet of wire or synthetic rope per winch of at least 9/16 inch diameter and rated at breaking strength of 27,000 pounds.

H.2.c.v. - J.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1714.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, LR 32:854 (May 2006), amended LR 36:456 (March 2010), LR 36:2580 (November 2010), LR 40:

Jill Boudreaux  
Undersecretary

1311#044

**POTPOURRI**

**Department of Public Safety and Corrections  
Oil Spill Coordinator's Office**

Deepwater Horizon Oil Spill; Programmatic and Phase III  
Early Restoration Planning Document

**Action:**

Notice of availability; request for comments.

**Summary:**

In accordance with the Oil Pollution Act of 1990 (OPA), the Louisiana Oil Spill Prevention and Response Act (OSpra), the National Environmental Policy Act (NEPA), and the Framework Agreement for Early Restoration Addressing Injuries Resulting from the Deepwater Horizon Oil Spill (Framework Agreement), the Federal and State natural resource damage assessment trustees (Trustees) are preparing a restoration planning document proposing a programmatic early restoration approach – including a programmatic environmental impact analysis of early restoration alternatives - to restore natural resources, ecological services, and recreation use services injury or lost as a result of the Deepwater Horizon oil spill (hereinafter “the Spill”). The document also proposes and evaluates a set of specific early restoration projects for implementation.

The purpose of this notice is to inform the public of the availability of this early restoration planning document, with an anticipated release date on or about December 6, 2013, as well as to seek public comments on the document. The Trustees have previously released to the public a Draft Phase I Early Restoration Plan and Environmental Assessment, which was approved as final in February 2012, and a Draft Phase II Early Restoration Plan and Environmental Review, which was approved as final in January 2013. These plans are available at <http://www.gulfspillrestoration.noaa.gov/restoration/early-restoration/>

This Notice of Availability also serves as notice that the Trustees intend to use components of existing restoration projects, as further described in the document and required by 15 C.F.R. 990.56 (b)(3). In those instances, the projects were previously developed with public review and comment and are subject to current public review and comment, are

adequate to partially compensate the environment and public as part of the Trustees' ongoing early restoration efforts, address resources that have been identified by Trustees as being injured by the Spill, and are reasonably scalable for early restoration purposes.

**Dates:**

Comments Due Date: Public comments received on or before February 4, 2014 (or 60 days from the availability of the document) will be considered.

Public Meeting Dates: Public meetings will be held to facilitate public review and comment on the document (See below schedule). Both written and verbal public comments will be taken at the meetings. Additional details regarding meeting information, including venues, will be published in local newspapers and will be posted on the web at <http://losco-dwh.com/>.

Date	Time	Location
Dec 16, 2013	6:00 p.m. Open House	Mobile, AL
	6:30 p.m. Public Meeting	
Dec 17, 2013	6:00 p.m. Open House	Long Beach, MS
	6:30 p.m. Public Meeting	
Jan 14, 2014	5:30 p.m. Open House	Belle Chasse, LA
	6:00 p.m. Public Meeting	
Jan 15, 2014	5:30 p.m. Open House	Thibodaux, LA1
	6:00 p.m. Public Meeting	
Jan 16, 2014	5:30 p.m. Open House	Lake Charles, LA1
	6:00 p.m. Public Meeting	
Jan 21, 2014	6:00 p.m. Open House	Port Arthur, TX
	6:30 p.m. Public Meeting	
Jan 22, 2014	6:00 p.m. Open House	Galveston, TX
	6:30 p.m. Public Meeting	
Jan 23, 2014	6:00 p.m. Open House	Corpus Christi, TX
	6:30 p.m. Public Meeting	
Jan 28, 2014	6:00 p.m. Open House	Pensacola, FL
	6:30 p.m. Public Meeting	
Jan 29, 2014	6:00 p.m. Open House	Panama City, FL
	6:30 p.m. Public Meeting	

<sup>1</sup> These meetings will be combined with the Louisiana Coastal Protection and Restoration Authority's Fiscal Year 2015 Draft Annual Plan Public Hearings.

**Addresses:**

Obtaining the Document:

- You may download the document, once released, which is expected to be on or about December 6, 2013, at <http://losco-dwh.com/>. Please visit <http://losco-dwh.com/> for updates on the availability of the document.
- Alternatively, you may request a CD of the document (see "for further information contact"). You may also review copies of the document at the public facilities listed at <http://losco-dwh.com/>.

**Submitting Comments:**

You may submit comments by one of the methods listed in the document or any of the following:

- Via the web: <http://losco-dwh.com/EarlyRestorationPlanning.aspx> or [www.gullspillrestoration.noaa.gov](http://www.gullspillrestoration.noaa.gov).
- For electronic submission containing attachments, email: [Karolien.Debusschere@la.gov](mailto:Karolien.Debusschere@la.gov).
- U.S. Mail: Louisiana Oil Spill Coordinator's Office, P.O. Box 66614, Baton Rouge, LA 70806 or U.S. Fish and Wildlife Service, P.O. Box 49567, Atlanta, GA 30345.

For Further Information Contact: Karolien Debusschere at [Karolien.Debusschere@la.gov](mailto:Karolien.Debusschere@la.gov).

**Supplementary Information:**

Introduction:

On or about April 20, 2010, the mobile offshore drilling unit Deepwater Horizon, which was being used to drill a well for BP Exploration and Production, Inc. (BP) in the Macondo prospect (Mississippi Canyon 252 – MC252), experienced a significant explosion, fire and subsequent sinking in the Gulf of Mexico, resulting in discharges of oil and other substances from the rig and from the wellhead on the seafloor. An unprecedented volume of oil and other discharges were released from the well into the Gulf of Mexico over a period of approximately three months. In addition, well over one million gallons of dispersants were applied to the waters of the spill area in an attempt to minimize impacts from spilled oil. An undetermined amount of natural gas was also released to the environment as a result of the spill. Affected resources include ecologically, recreationally, and commercially important species and their habitats in the Gulf of Mexico and along the coastal areas of Alabama, Florida, Louisiana, Mississippi, and Texas.

The Trustees (listed below) are conducting the natural resource damage assessment for the Spill under OPA, 33 U.S.C. § 2701 et seq. Pursuant to OPA, federal and state agencies and Indian tribes may act as trustees on behalf of the public to assess natural resource injuries and losses and to determine the actions required to compensate the public for those injuries and losses. OPA further instructs the designated trustees to develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the injured natural resources under their trusteeship, including the loss of use and services from those resources from the time of injury until the time restoration is complete.

The Trustees are:

- United States Department of the Interior (DOI), as represented by the National Park Service, U.S Fish and Wildlife Service, and Bureau of Land Management;
- National Oceanic and Atmospheric Administration (NOAA), on behalf of the United States Department of Commerce;
- United States Department of Agriculture (USDA);
- United States Environmental Protection Agency (EPA);
- Louisiana Coastal Protection and Restoration Authority, Louisiana Oil Spill Coordinator's Office, Louisiana Department of Environmental Quality, Louisiana Department of Wildlife and Fisheries, and Louisiana Department of Natural Resources;
- Mississippi Department of Environmental Quality;
- Alabama Department of Conservation and Natural Resources and Geological Survey of Alabama;
- Florida Department of Environmental Protection and Florida Fish and Wildlife Conservation Commission; and
- Texas Parks and Wildlife Department, Texas General Land Office, and Texas Commission on Environmental Quality.

The United States Department of Defense (DOD) is a Trustee but, to date has not become a signatory to the Framework Agreement.

**Background:**

On April 20, 2011, BP agreed to provide up to \$1 billion toward early restoration projects in the Gulf of Mexico to address injuries to natural resources caused by the Spill. This early restoration agreement, entitled "Framework for Early Restoration Addressing Injuries Resulting from the Deepwater Horizon Oil Spill" (Framework Agreement), represents a preliminary step toward the restoration of injured natural resources. The Framework Agreement is intended to expedite the start of restoration in the Gulf in advance of the completion of the injury assessment process. The Framework Agreement provides a mechanism through which the Trustees and BP can work together "to commence implementation of early restoration projects that will provide meaningful benefits to accelerate restoration in the Gulf as quickly as practicable" prior to the completion of the natural resource damage assessment process or full resolution of the Trustees' natural resource damages claim.

In addition to the ten projects previously proposed, approved, and finalized in Phase I and Phase II of early restoration, the Trustees are proposing additional early restoration projects (Phase III) in the document to address injuries from the Spill. The Trustees have actively solicited public input on restoration project ideas through a variety of mechanisms, including public meetings, electronic communication, and creation of a Trustee-wide public website and database to share information and receive public project submissions. Their key objective in pursuing early restoration is to secure tangible recovery of natural resources and natural resource services for the public's benefit while the longer-term process of fully assessing injury and damages is still underway. The projects proposed in these early restoration planning documents are not intended to, and do not fully, address all injuries caused by the Spill or

provide the extent of restoration needed to make the public and environment whole.

**Next Step:**

As described above, public meetings will be scheduled to facilitate the public review and comment process. After the public comment period ends, the Trustees will consider and address the comments received before issuing a final document. Upon finalization of the document, agreement with BP regarding these projects will be completed, and approved projects will then proceed to implementation, pending compliance with all applicable state and federal laws.

**Public Availability of Comments:**

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information, may be publicly available at any time.

**Administrative Record:**

The documents comprising the Administrative Record can be viewed electronically at the following location: <http://losco-dwh.com/AdminRecord.aspx>.

**Authority:**

The authority of this action is the Oil Pollution Act of 1990 (33 U.S.C. § 2701 et seq.), the implementing Natural Resource Damage Assessment regulations found at 15 C.F.R. Part 990, the Louisiana Oil Spill Prevention and Response Act (R.S. §§ 30:2451-2496 (2010)), and the implementing Natural Resource Damage Assessment regulations found at La. Admin. Code 43:101 et seq.

Brian Wynne  
Coordinator

1311#037

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